

HUMAN RIGHTS IN THE SIX ARAB STATES OF THE GULF COOPERATION
COUNCIL (GCC): FROM VISION TO REALITY

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I. INTRODUCTION

Over the last decade, all six Gulf Cooperation Council (“GCC”) States—namely, Saudi Arabia, the UAE, Bahrain, Kuwait, Oman, and

Qatar—have been exploring ways to promote their cultural policies and open up their entertainment industries to international business and tourism. At the same time, there has been a visible increase in the engagement of GCC states with international human rights bodies to the point that some authors have asserted the existence of a human rights trend in the region.¹ This trend, on its face, is not merely a political move, unlike the 2014 GCC Declaration on Human Rights.² The increase in engagement also encompasses substantial efforts taken towards a more effective human rights model, including, in particular, the ratification of human rights treaties³ and being more responsive to U.N. Special Procedures.⁴ In addition, GCC states have embraced the seventeen U.N. Sustainable Development Goals (“SDGs”)—which is evidenced also by the substantial progress of these States in the realization of the SDGs⁵—with all of them also accepting the U.N.-

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¹ Başak Çalı, Nazila Ghanea & Benjamin Jones, *Big Promises, Small Gains: Domestic Effects of Human Rights Treaty Ratification in the Member States of the Gulf Cooperation Council*, 28 HUM. RTS. Q. 21, 56 (2016) (arguing that there is a “trend . . . towards increased ratification of UN human rights treaties with fewer reservations , noting however cautiously that this has ‘limited effects driven by international socialization and cautious leadership preferences’”); David Keane & Tania Kyriazi, *The Emergent Right of Human Rights Education in GCC States*, 2 ASIAN Y.B. HUM. RTS. & HUMANITARIAN L. 205, 227 (2014) (noting, for example, the “evolving dialogue between UN Bodies and GCC States” in the context of the UPR).

² Khalifa AlFadhel, *The GCC Human Rights Declaration: An Instrumentation of Cultural Relativism*, 31 ARAB L. Q. 89, 91 (2017) (discussing why this declaration falls short of universal human rights standards); see also Keane & Kyriazi, *supra* note 1, at 222 (noting that it “has been met with mixed reviews.”).

³ See Çalı et al., *supra* note 1, at 24-25, 56-57. The same authors, nonetheless, argue that “[their] findings confirm that the UN human rights treaties do not have extensive effects on institutions, legislative changes, and judicial decisions in the GCC region post ratification.”

⁴ By way of indication, see the most recent visits of the U.N. Working group on disappearances in Qatar in 2019; the visit of the U.N. independent expert on solidarity in Qatar in September 2019 (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24969&LangID=E>; <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25234&LangID=E>).

⁵ Human Rights Council Res. 37/24, U.N. Doc. A/HRC/RES/37/24, at 1-2 (Mar. 23, 2018) (adopted without a vote); see Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventeenth to Twenty-first Periodic Reports of Qatar, U.N. Doc. CERD/C/QAT/CO/17-21, at ¶ 14 (Nov. 22, 2017) [hereinafter Concluding Observations on Reports of Qatar]. See generally

initiated SDGs' "Voluntary National Review."⁶ In 2002, 2008, and 2009 respectively, Qatar, Oman, and Bahrain also set up national human rights institutions ("NHRIs"). Even today, it is possible to file individual complaints before the Omani Human Rights Commission on WhatsApp.⁷

The purpose of this article is to explore the extent to which the postulate of a human rights trend in the region is valid. In order to do this, the article explores human rights politics in Gulf States (Part II). This includes an examination of formal human rights indicators, such as treaty ratification and reservations, as well as State practice in relation to persistent human rights violations. Furthermore, it attempts to re-construct the perception of human rights in the Gulf, drawing primarily on local practice, and specifically the strategies undertaken by Gulf States in realizing their "Visions"⁸ (by 2030,⁹ 2035,¹⁰ and 2040¹¹ respectively) (Part III). In this regard, the paper makes two submissions. First, it submits that there is indeed a "shift" towards a model of better human rights compliance, yet this trend is detectable in these States' local policies, and not in their international commitments. Second, it submits that international pressure, or the growth of the human

SDG Planning Calendar, UNITED NATIONS, <https://www.un.org/sustainabledevelopment/sdg-planning-calendar/> (various events hosted in Doha and Dubai over 2019 and 2020, noting also that Shaikha Moza's *Above All Foundation* has been appointed by the U.N. Secretary General as an "advocate" for the SDGs).

⁶ See, e.g., U.N. HIGH-LEVEL POLITICAL FORUM, TRANSFORMATION TOWARDS SUSTAINABLE AND RESILIENT SOCIETIES, FIRST VOLUNTARY NATIONAL REVIEW KINGDOM OF SAUDI ARABIA (July 9-182018), <https://sustainabledevelopment.un.org/memberstates/saudi-arabia>.

⁷ Sheikha Al Maqhusi, *Now, File Human Rights Complaints in Oman on WhatsApp*, TIMES OF OMAN (Aug. 5, 2019), <https://timesofoman.com/article/1721260/Oman/Now-file-human-rights-complaints-in-Oman-on-WhatsApp>.

⁸ "Visions" are GCC States policy documents to take concrete action in order to achieve certain objectives within a specific certain period of time.

⁹ SAUDI ARABIA 2030 VISION, KINGDOM OF SAUDI ARABIA, <https://vision2030.gov.sa/en> (last accessed Mar. 14, 2020); UAE 2021-2030 FUTURE STRATEGY, GOV'T OF THE U.A.E., <https://government.ae/en/more/uae-future/2021-2030> (last accessed Mar. 14, 2020); QATAR NATIONAL VISION 2030, QATAR GOV'T COMM. OFF., <https://www.gco.gov.qa/en/about-qatar/national-vision2030> (last accessed Mar. 14, 2020); BAHRAIN ECONOMIC VISION 2030, GOV'T OF BAHRAIN, <https://www.bahrain.bh/bahrain2030> (last accessed Mar. 14, 2020).

¹⁰ GENERAL SECRETARIAT OF THE SUPREME COUNCIL FOR PLANNING AND DEVELOPMENT OF KUWAIT, A DRAFT STRATEGIC VISION FOR THE STATE OF KUWAIT 2010-2035 AN EXECUTIVE SUMMARY, <https://www.scpd.gov.kw/archive/The%20Vision%20of%20The%20State%20of%20Kuwait.pdf> (last accessed Mar. 14, 2020).

¹¹ OMAN VISION 2040, <https://www.2040.om/en/> (last accessed Dec. 10, 2019).

rights movement, or even domestic leadership¹² are simply inadequate reasons to explain the *rationale* of this shift. The reasons for “more” or “better” human rights compliance are to be sought primarily in the will of Gulf States to diversify their economies from the energy sector and arguably, in the case of Qatar alone, to restore their relations of good neighborliness following the blockade against it in 2017.¹³

As such, this article does not offer an exhaustive analysis of widely discussed topics such as the incompatibility between Shari'a and human rights, or the validity of the so-called Shari'a reservations. It does, however, briefly discuss the position of Shari'a in these States' legal systems, as well as their attitude vis-à-vis universal human rights standards. The paper pays particular attention to the Qatari paradigm, which, as the paper argues, could provide a fruitful example for the other Gulf States. Ultimately, the paper aims at shifting the focus of the academic discourse on these States from being Shari'a-governed to modern monarchies, where human rights can play an increasingly important role—not as universal values, but rather, as undisputed necessities for progress, human development, and economic growth.

II. HUMAN RIGHTS POLITICS IN THE GULF

Human rights are not an explicit part of the GCC mandate, the scope of which is to “effect coordination, integration and inter-connection between Member States in all fields.”¹⁴ In addition, GCC countries have for a long time been perceived as hostile to the very concept of human rights.¹⁵ Part of this hostility has been typically associated with

¹² Çalı et al., *supra* note 1, at 26-29 (offering typologies of these rationales of ratification of human rights, and arguing, at 41, that “none of these motivational factors for ratification, however, offer a fully negative or an overly positive prospect for the subsequent implementation of human rights treaties in the region.”).

¹³ See OHCHR TECHNICAL MISSION TO THE STATE OF QATAR NOV. 17-24, ON THE IMPACT OF THE GULF CRISIS ON HUMAN RIGHTS 5 (Dec. 2017).

¹⁴ Gulf Cooperation Council Charter, art. 4 (May 25, 1981) [hereinafter GCC Charter] (“The basic objectives of the Cooperation Council are: To effect coordination, integration and inter-connection To deepen and strengthen relations To formulate similar regulations in various fields including . . . : Economic and financial affairs[;] Commerce, customs and communications[;] education and culture” See also the minutes of the 39th GCC Summit: *Summit Rectifies Mandate of GCC*, ARAB TIMES (Dec. 12, 2018), <https://www.arabtimesonline.com/news/summit-rectifies-mandate-of-gcc/>.

¹⁵ Cf. Keane & Kyriazi, *supra* note 1, at 207-208.

Shari'a, and the alleged contradiction of Islam with Western values.¹⁶ Certainly, the anti-Western narrative traces its historical underpinnings in the pan-Arab anti-colonial struggles and the will to prevent alienation of the Muslim identity.¹⁷ An unsharpened suggestion of conflicting values, however, is misleading, as it diverts the focus from more important issues of governance and political structures of Gulf States (as will be discussed in II section (C) of this Chapter). Furthermore, it does not offer an adequate explanation of the modern realities of the Gulf States. These realities in fact are characterized by a sharp oxymoron, namely, the spectacular improvement over the last decades in the area of social and economic rights on the one hand, and the persistence of a negative stance vis-à-vis international human rights commitments on the other hand (especially in the areas of freedom of speech and gender equality). In order to fully understand this paradoxical situation, therefore, this section addresses the Gulf States' commitments at the international level in light of their legal traditions.

A. The Paradox of GCC States: Tradition, Religion and Change

Despite the variations in their legal traditions, all Gulf States have been undergoing a process of modernization. At the international level and specifically in the context of U.N. treaty ratification practice, positive steps in the undertakings of human rights obligations remain exceptional.

1. Variations in the Gulf

GCC States are oil-driven monarchies that have witnessed an exponential growth of the energy sector since the late 1960s and 1970s—particularly Saudi Arabia since the discovery of oil in 1938.¹⁸ Their

¹⁶ On the Muslim critique of the West and the rejection of “Western values,” see Ann Elizabeth Mayer, *Islam and the State*, 12 *CARDOZO L. REV.* 1015, 1024-25 (1991); see generally Cemil Aydin, *The Politics of Conceptualizing Islam and the West*, 18 *ETHICS & INT'L AFFAIRS* 18 (2004).

¹⁷ See Ebrahim Afsah, *Contested Universalities of International Law. Islam's Struggle with Modernity*, 10 *J. HIST. INT'L L.* 259, 264-77 (2008) (arguing that “The contested universality of international law therefore cannot be adequately discussed in isolation from the spread of modernity . . . and continues to be perceived in large parts of the world as the illegitimate imposition of Western ways, thereby tainting the very idea of progress.”).

¹⁸ An account of these historical element is offered, indicatively, by Majed Al-zahrani, *The System of Kafala and the Rights of Migrant Workers in GCC Countries - With Specific Reference to Saudi Arabia*, 16 *EUR. J. L. REFORM* 377, 379-81 (2014).

Constitutions generally lack participatory structures and democratic legitimacy.¹⁹ They are also Muslim-majority and, Bahrain set aside,²⁰ predominantly Sunni. Apart from religion, they also share the same racial and ethnic Arab background, similar culture and traditions,²¹ as well as similar colonial history as former British protectorates. Islam is not just the official religion of GCC States, it also is their *principal* legislative source. This is reiterated not only in local Constitutions,²²

For the current figures on GDP growth, see WORLD BANK, GULF ECONOMIC MONITOR, APRIL 2019: BUILDING THE FOUNDATIONS FOR ECONOMIC SUSTAINABILITY: HUMAN CAPITAL AND GROWTH IN THE GCC 9 (May 1, 2019), <https://www.worldbank.org/en/country/gcc/publication/gulf-economic-monitor-april-2019> [hereinafter WORLD BANK REPORT 2019]. See also JILL CRYSTAL, OIL AND POLITICS IN THE GULF: RULERS AND MERCHANTS IN KUWAIT AND QATAR (1995).

¹⁹ See e.g., GIANLUCA P. PAROLIN, *Winter Is Coming: Authoritarian Constitutionalism Under Strain in the Gulf*, in CONSTITUTIONALISM, HUMAN RIGHTS, AND ISLAM AFTER THE ARAB SPRING 149, 155 (R. Grote et al. ed., 2016); Badria Abdullah Al-Awadhi, *Citizens' Rights in Selected Arab Constitutions*, in CONSTITUTIONALISM, HUMAN RIGHTS, AND ISLAM AFTER THE ARAB SPRING 559, 571-72 (Rainer Grote & Tillman Röder eds., 2016); NIMER SULTANY, LAW AND REVOLUTION: LEGITIMACY AND CONSTITUTIONALISM AFTER THE ARAB SPRING, HUMAN RIGHTS, AND ISLAM AFTER THE ARAB SPRING 277-80 (2017); Keane & Kyr-iazi, *supra* note 1, at 227.

²⁰ Bahrain, however, is also ruled by a Shi'a family. See REPORT OF THE BAHRAIN INDEPENDENT COMMISSION OF INQUIRY, BAHR. INDEP. COMM'N INQUIRY (Nov. 23, 2011), www.bici.org.bh [hereinafter Bassiouni Commission Report].

²¹ GCC Charter, pmbl.: "[B]eing fully aware of the ties of special relations, common characteristics and similar systems founded on the creed of Islam which bind them"

²² DASTŪR QATR [CONST. OF QATAR], art. 1 ("Qatar is an independent sovereign Arab State. Its religion is Islam and Shari'a law shall be a main source of its legislations"); AD-DASTŪR AL-KŪWAYTĪY [CONST. OF KUWAIT], art. 2 (1962) (re-instated 1992) ("the religion of the State is Islam and Islamic Law shall be a main source of legislation."); DASTŪR MAMLAKAT AL-BAHRAYN [CONST. OF THE KINGDOM OF BAHRAIN], art. 2 (2002) ("The religion of the State is Islam. The Islamic Shari'a is a principal source for legislation."); AN-NIZĀM AL-ASĀSĪY AD-DAWLAH, AL-BĀB AL-AWWAL AD-DAWLAT W NIZĀM AL-HUKM [BASIC STATUTE OF THE STATE], art. 2 [Oman] ("The religion of the State is Islam and Islamic Sharia is the basis for legislation."); DASTŪR DAWLAT AL-IMĀRĀT AL-'ARABIYAH AL-MUTAḤIDAH [CONST. OF THE UNITED ARAB EMIRATES], art. 7 ("Islam is the official religion of the Union. The Islamic Shari'a shall be a main source of legislation in the Union."); AL-NIZĀM AL-ASĀSĪY LIL-HUKM [BASIC SYSTEM OF GOVERNANCE], art. 8 (Saudi Arabia) ("The government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation, and equality in accordance with the Islamic Shari'a.").

but also, in major legislative instruments, such as civil²³ and penal²⁴ codes. Therefore, any obligation undertaken at the international level may, at least theoretically, be rebuffed because it conflicts with Shari'a.²⁵

The realities of Gulf States, however, vary substantially. At one side of the spectrum, Kuwait has been long-perceived as the least repressive state in the Gulf.²⁶ This is primarily due to its distinct history: in the aftermath of the Iraqi invasion of 1990 its attempt at political stability encompassed the establishment of several “semi-democratic” institutions, including an elected Parliament,²⁷ and a Constitutional Court.²⁸ At the other side of the spectrum, Saudi Arabia has also distinguished itself from the remaining five GCC countries. The Saudi regime follows the Hanbali school (the strictest of the four schools of thought in Sunni Islam) and is influenced by Wahhabism as well as

²³ See, e.g., Qānūn Raqam 22 li-Sinnah 2004: Bi-Iṣḍār al-Qānūn al-Madany, al-Faṣil al-Awal, al-Fira' al-Awal: Taṭabīq al-Qānūn [Law no. 14 of 2014: Issuing the Civil Code, Chapter One, Subsection One] [Civil Code, ch. 1, subsec. 1], art. 1, (Qatar) (English translation available at: <https://www.almeezan.qa/lawview.aspx?opt&lawid=2559&language=en>) (Arabic version available at: <https://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=8877&lawId=2559&language=ar>) which finds Shari'a law applicable in the event of silence or lacuna in the code.

²⁴ For example, Qānūn Raqam 11 li-Sinnah 2004: Bi-Iṣḍār Qānūn al-'Aqūbāt, al-Aḥkām al-Tamhīdīy [Law no. 11 of 2004: Issuing the Penal Code, Introductory Provisions], art. 1 (Qatar) (English translation available at: <https://www.almeezan.qa/LawArticles.aspx?LawArticleID=593&LawId=26&language=en>) (Arabic version available at: <https://www.almeezan.qa/LawPage.aspx?ID=26&language=ar>) (which states that Islamic Sharia provisions are applicable for certain offences if the suspect or the victim is a Muslim. These crimes, namely theft, adultery, defamation, drinking alcohol and apostasy, are considered *hudūd* (i.e., punishable under the Qur'an)).

²⁵ Cf. Çalı et al., *supra* note 1, at 32-33 (discussing the “dualist construction” of GCC states, and noting also “the presence of Shari'a courts or judges only trained in Shari'a law”).

²⁶ See GEORGE SFEIR, MODERNIZATION OF THE LAW IN ARAB STATES 48 (1997) (discussing the setting up of the [Kuwait] national system in anticipation of its independence); *id.* at 48-50 (discussing the history of the remaining Gulf States, whereby “reforms were neither that speedy nor as comprehensive”); see also Fatiha Dazi-Heni, *The Arab Spring Impact on Kuwaiti “Exceptionalism”*, 4 ARABIAN HUMANITIES (ONLINE) (2015), <https://journals.openedition.org/cy/2868?lang=en#authors>.

²⁷ PAROLIN, *supra* note 19, at 155.

²⁸ *Id.*; Çalı et al., *supra* note 1, at 34 (noting that in Bahrain also, there is such court).

the so-called “scripturalists.”²⁹ This is reflected, first, in the Saudi Constitution, which is the outlier in subjecting both governance and human rights to the Shari’a,³⁰ and second, on the Saudi judicial system, which maintains Shari’a courts and Shari’a procedural rules³¹ for the resolution of all types of disputes.³² In addition, contrary to the practice in other GCC States, the Kingdom has set up two bodies that monitor the application of Shari’a in the country: the Council of Senior Scholars [*majlis al-‘ulama*], which is an independent religious authority that issues religious opinions [*fatāwá* (pl.), *fatwá* (sg.)],³³ and the

²⁹ By way of indication, see LEONARD WOOD, *Legislation as an Instrument of Islamic Law*, in OXFORD HANDBOOK OF ISLAMIC LAW 572 (2018); Anver Emon, *Shari’a and the Modern State*, in ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW 52, 67 (Anver M. Emon, et al. eds., 2012); LORING DANFORTH, *CROSSING THE KINGDOM: PORTRAITS OF SAUDI ARABIA* 6-7 (2016); Phoebe Dantoin, *Go All over the Earth and Behold: What the Right to Drive Means for Women’s Freedom of Movement and Saudi Arabia’s Guardianship System*, 103 WOMEN LAWYERS’ J. 12, 14 (2018) (discussing the male guardianship system and arguing that “specific and particularly exacting challenges [are] faced by activists in Saudi Arabia: a government intertwined with an unusually literal section of Islam, whose restrictions carry heavy religious authority and are multiplied in practice by unofficial but enforced cultural norms.”); Javier El-Hage & Celine Assaf Boustani, *Incitement and Defamation in Saudi Arabia: The Case of Human Rights Lawyer Waleed Abu Al-Khair*, 24 ILSA J. INT’L & COMP. L. 369, 371-73 (2017-2018).

³⁰ BASIC SYSTEM OF GOVERNANCE, art. 23 (Saudi Arabia) (“The state protects Islam; it implements its Shari’a; it orders people to do right and shun evil; it fulfills the duty regarding God’s call.”). Cf. Nathan Brown and Mara Revkin, ‘Islamic Law and Constitutions’ in OXFORD HANDBOOK OF ISLAMIC LAW 792-793 (Anver Emon & Ruhmee Ahmed eds., 2018) (“Saudi Arabia’s Basic Law demands unconditional loyalty to the King but simultaneously constrains royal powers in accordance with the Qur’an”).

³¹ E.g., Al-Nizām al-Marāf’āt ash-Shar’īah [Law of Procedure Before Shar’iah Courts], Royal Decree No. M/21, 20 Jumada I, 1421, August 19, 2020, art. 1 (Saudi Arabia) (English translation available at: <https://www.wipo.int/edocs/lexdocs/laws/ar/sa/sa029ar.pdf>) (“Courts shall apply to cases before them provisions of Shari’ah laws, in accordance with the Qur’an and Sunnah of the Prophet (PBUH), and laws promulgated by the State that do not conflict with the Qur’an and Sunnah . . .”).

³² *Id.*

³³ BASIC SYSTEM OF GOVERNANCE, ‘the authorities of the State’ art. 45 (Saudi Arabia) (“The sources of the deliverance of fatwa in the Kingdom of Saudi Arabia are God’s Book and the Sunnah of His Messenger. The law will define the composition of the senior *ulema* body, the administration of scientific research, deliverance of fatwa and it’s [the body of senior *ulema*’s] functions.”). See also El-Hage & Assaf Boustani, *supra* note 29, at 388; U.S. DEP’T OF STATE, SAUDI ARABIA 2018 HUMAN RIGHTS REPORT 32 (2018), executive summary [hereinafter U.S. D.O.S. Report 2018], <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/saudi-arabia/>.

“Committee for the Promotion of Virtue and the Prevention of Vice” (*hayah*).³⁴ The latter has also established an enforcement body, the so-called “Sharia police” (*muṭaww‘a*), which is in charge of controlling morals and social practices within the State, especially female dress code and gender mixing in public.³⁵

2. Violations of Civil Liberties and Media Freedom

Violations of civil liberties are still conspicuous throughout the Gulf. This is especially true for areas that are typically problematic in non-democratic States—such as freedom of expression and media freedom. The particularly egregious circumstances of the extrajudicial killing of Jamal Khashoggi are an illustration of the prevailing culture of impunity for crimes committed against journalists and human rights activists in Gulf States.³⁶ At the time of writing, Gulf countries ranked at the very bottom of media freedom standards, only slightly above certain war-torn States.³⁷ Laws on espionage, criminal defamation (*lèse-majesté* laws), and cyber security are still applied, resulting in the easy prosecution of political dissidents.³⁸ At the same time, Gulf States have been particularly receptive to hate speech offenses and the penalization of any form of hate speech, all of which are susceptible to abuse, including by expanding the scope of what constitutes hate speech.³⁹ This further explains why no Gulf State has placed any reservations whatsoever to the “hate speech provision” (Article 4) of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”)—ratified by all GCC States.⁴⁰

³⁴ DANFORTH, *supra* note 29, at 7.

³⁵ *Id.* at 65.

³⁶ Agnès Callamard (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Annex to the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Investigation into the Unlawful Death of Mr. Jamal Khashoggi*, U.N. Doc. A/HRC/41/36 (June 19, 2019).

³⁷ See 2020 *World Press Freedom Index*, REPORTERS SANS FRONTIÈRES [REPORTERS WITHOUT BORDERS], <https://rsf.org/en/ranking#> [hereinafter RSF Press Rankings]. Saudi Arabia ranks 172/180 in terms of media freedom, dropping three places since 2018.

³⁸ Matt Duffy, *Arab Media Regulations: Identifying Restraints on Freedom of the Press in the Laws of Six Arabian Peninsula Countries*, 6 BERKELEY J. MIDDLE E. & ISLAMIC L. 1, 1, 5-6, 10 (2014).

³⁹ *Id.* at 17; see e.g., El-Hage & Assaf Boustani, *supra* note 29, at 390; see also ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS* 187-89 (5th ed. 2013).

⁴⁰ Upon ratification of the CERD, Saudi Arabia has placed a typical “Shari’a” reservation, namely, that it will “implement the provisions [of the above

The recent legal reforms in the area of media freedom do not confirm the existence of a trend of progress. In fact, laws punishing the dissemination of such news can be abused extremely easily.⁴¹ For example, the recent Qatari cyber-security law enacted in 2016 includes a provision on criminal defamation that punishes not only those spreading defamatory information or “fake news,” but also punishes anyone who violates social values or principles online with a sentence that can reach three years imprisonment and a fine of approximately 100,000 QR, which is equivalent to \$25,000.⁴² Much more alarmingly, the UAE’s equivalent law, also passed in 2016, provides much harsher penalties, including, for example, imprisonment for an unspecified period of time and penalties of up to \$135,000 for religious offenses (and this “without prejudice to the crime of slander determined by the Islamic Sharia”).⁴³ Penalties for those who promote or praise . . . ideas which would prompt riot, hatred, racism, sectarianism, or damage the national unity or social peace in particular could reach \$270,000, in

Convention], providing these do not conflict with the precepts of the Islamic *Shariah*.” International Convention on the Elimination of All Forms of Racial Discrimination [CERD], Saudi Arabia Reservation, 660 U.N.T.S. 195 (Sept. 23, 1997), available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-2&chapter=4&lang=en. Bahrain and Kuwait both issued reservations in relation to the submission of disputes to the I.C.J., as provided by art 22 of CERD. CERD, Bahrain Reservation, 660 U.N.T.S. 195 (Mar. 27, 1990); CERD, Kuwait Reservation, 660 U.N.T.S. 195 (Oct. 15, 1968).

⁴¹ Cf. Duffy, *supra* note 38, at 30; Mandate from David Kay, (Special Rapporteur the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Freedom of Expression and Elections in the Digital Age*, Res. Paper no. 1/2019 (June 2019); Andrei Richter, *Fake News and Freedom of the Media*, 8 J. INT’L MEDIA & ENT. L. 1, 13-14 (2019) (reiterating the position of the U.N. Human Rights Committee on the matter).

⁴² Qānūn Raqam 14 li-Sinnah 2014: Bi-Iṣḍār Qānūn Mukāfiḥat al-Jirā’im al-Ilk-trawnīah [Law no. 14 of 2014: Issuing the Law Combatting Electronic Crimes], art. 8 (Qatar) (English translation available at: http://chato.cl/blog/files/QatarCyber-crimeLaw_unofficial_translation.pdf) (Arabic version available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100242/120183/F1232109237/100242.pdf>); cf. High Comm’r Human Rts., Rep. Summary of Stakeholders’ Submissions on Qatar, ¶ 36, U.N. Doc. A/HRC/WG.6/33/QAT/3 (Feb. 21, 2019) [hereinafter U.N. Stakeholders’ Submissions on Qatar].

⁴³ Marsūm bi-Qānūn 5 li-Sinnah 2012, bi-Sh’an Mukāfiḥat Jirā’im Taqunīah al-M’alūmāt [Fed. Law No. 5 of 2012, on Combatting Info. Tech. Crimes], art. 35 (U.A.E.) (English translation at: http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf).

addition to an unspecified period of imprisonment.⁴⁴ This is in line with the attitude towards freedom of expression and access to information. The UAE, for example, has placed a reservation allowing for generalized censorship even for children's books, subjecting the access of children to these books (Article 17 of the Convention on the Rights of the Child ("CRC")) "to the requirements of domestic statutes and laws and . . . the country's traditions and cultural values."⁴⁵ Similarly, in 2016, Saudi Arabia also passed a new regulation on the preservation of public decency, Saudi values, and "identity," with accompanying penalties and fines of up to 5,000 SAR, the equivalent of \$1,333.⁴⁶ This reinforces the existing framework on cyber offences. In fact, the 2017 Saudi Royal Decree provided for extremely harsh crimes for those "publicly slandering and causing harm to others by means of information technology" and "a fine of [3,000,000 SAR] (equivalent to \$800,000) for the production, preparation, transmission or storage of material harmful to public order, religious values, public decency or the sanctity of private life via the internet or on a computer network."⁴⁷

The situation of human rights dissenters and individuals belonging to minorities is equally in a state of regression. This is evidenced by a number of U.N. Special Procedures findings and NGO reports, including those submitted in the context of the Universal Periodic Review ("UPR").

⁴⁴ *Id.* at art. 20.

⁴⁵ See Convention on the Rights of the Child art. 17, Nov. 22, 1989, 1577 U.N.T.S. 3.

⁴⁶ Aseel Bashraheel, *Public Decency Laws in Saudi Arabia 'Still on Hold': Official*, ARAB NEWS (May 28, 2019), <https://www.arabnews.com/node/1502986/saudi-arabia>; see also Eman Alhussein & Sara Almohamadi, *The Gray Zone of Social Reforms in Saudi Arabia*, ARAB GULF STATES INST. WASH. (Sept. 24, 2018), <https://ag-siw.org/the-gray-zone-of-social-reforms-in-saudi-arabia/>.

⁴⁷ Nizām Mukāfiḥat Ja'im al-M'alūmāṭīah, Marsūm al-Malakīy al-Karīm Raqam M/17, 8 Rabi' al-Awwal 128 [Anti-Cyber Crime Act, Royal Decree No. 17 (Mar. 26, 2007)], art. 3(5), 6(1) (Saudi Arabia) (official English translation at: <https://www.citc.gov.sa/en/RulesandSystems/CITCSystem/Pages/Cyber-crimesAct.aspx>) (Arabic version at: <https://www.citc.gov.sa/ar/RulesandSystems/CITCSystem/Pages/CybercrimesAct.aspx>); U.N. CERD Comm., *Consideration of Reports Submitted by States Parties under Article 9 of the Convention (Saudi Arabia)*, ¶ 46, U.N. Doc. CERD/C/SAU/4-9 (Oct. 10, 2016).

The target of these reviews is not only Saudi Arabia,⁴⁸ but also Bahrain,⁴⁹ Oman,⁵⁰ and the UAE.⁵¹ Even the once liberal image of Kuwait is

⁴⁸ See e.g., High Comm'r Human Rts., Rep. Summary of Stakeholders' Submissions on Saudi Arabia, ¶¶ 9-10, U.N. Doc. A/HRC/WG.6/31/SAU/3 (Aug. 24, 2018) [hereinafter U.N. Stakeholders' Submissions on Saudi Arabia] (noting, e.g., that the "death penalty has been used increasingly over the past five years;" that "[the] death penalty is pronounced for a large number of crimes, including non-violent offences as drug crimes and adultery;" and that "court documents show that all defendants [*Shia minorities*] were held in pre-trial detention for more than two years."); HUMAN RIGHTS WATCH, WORLD REPORT 2018: EVENTS OF 2017 464 (2018); see also, generally, U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 52/2016 concerning a minor (Saudi Arabia), U.N. Doc. A/HRC/WGAD/2016/52 (Jan. 20, 2017); U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 61/2016 concerning three minors (minors A, B, and C, whose names are known to the Working Group) (Saudi Arabia), U.N. Doc. A/HRC/WGAD/2016/61 (Feb. 6, 2017); U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No.38/2015 (Saudi Arabia), U.N. Doc. A/HRC/WGAD/2015 (Oct. 26, 2015); U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 41/2015 concerning Ali Mahdi Hasan Saeed, Hasan Mahdi Hasan Saeed, Husain Abdul Jalil Husain and Mahmood Mohamed Ali Mahdi (Bahrain), U.N. Doc. A/HRC/WGAD/2015/41 (Mar. 22, 2016); U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 41/2011 (Kingdom of Saudi Arabia), U.N. Doc. A/HRC/WGAD/2011/41 (Feb. 29, 2012).

⁴⁹ See HRC Committee, Concluding Observations on the Initial Report of Bahrain, U.N. Doc. CCPR/C/BHR/CO/1, ¶¶ 35, 37 (Nov. 5, 2018) [hereinafter HRC Comm., Initial Rep. on Bahrain] (regarding the excessive use of force and 37 on the "reports that acts of torture and ill-treatment"); CRC Comm., Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Bahrain, ¶¶ 13, 23, U.N. Doc. CRC/C/BHR/CO/4-6 (Feb. 27, 2019) (e.g., ¶ 13 on "reports of restrictions on the work of civil society organizations and human rights defenders, including those working on children's rights" and "violence committed against human rights defenders, including child human rights defenders," and ¶ 23 on restrictions to the rights of "Freedom of expression, association and peaceful assembly") [hereinafter CRC Comm., Concluding Observations on Bahrain]; U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 23/2015 concerning Sheikh Ahmed Ali al-Salman (Bahrain), U.N. Doc. A/HRC/WGAD/2015/23 (Nov. 17, 2015); U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 55/2016 concerning Mahmood Abdulredha Hasan al-Jazeera (Bahrain), U.N. Doc. A/HRC/WGAD/2016/55 (Jan. 30, 2017).

⁵⁰ See e.g., U.N. Human Rts. Council, Compilation Prepared by the Office of the U.N. High Comm'r for Human Rts. in accordance with para. 15 (b) of the Annex to HRC Res. 5/1 and para. 5 of the Annex to Council Res. 16/21 (Oman), ¶ 26 U.N. Doc. A/HRC/WG.6/23/OMN/2 (Aug. 31, 2015) [hereinafter HRC, Oman Compilation] (¶ 26 discusses "restrictions on assembly, excessive use of force by the police, threats, arbitrary arrests, abductions, detentions in secret locations and torture at the hands of the authorities."). See generally U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 53/2014 (Oman), U.N. Doc. A/HRC/WGAD/2014/53 (Feb. 11, 2015); U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 54/2014 (Oman), U.N. Doc. A/HRC/WGAD/2014/54 (Feb. 12, 2015).

shadowed by the conditions of migrant workers and the persistence of statelessness persons in the country (in relation to tens of thousands of *Bidoons*);⁵² the lack of a national human rights commission;⁵³ the fact that ‘executions resumed after a hiatus of four years’;⁵⁴ and that media freedom indicators have been deteriorating;⁵⁵ and generalized criticism in relation to that State’s institutional structures.⁵⁶ This is true also for the Emirates. In Dubai, in particular, the situation has been explosive since 2018, when the Dubai royal family was shaken by revelations about the alleged abduction, arbitrary detention, forced disappearance, and

⁵¹ See Human Rts. Council, Rep. Summary of Stakeholders’ Submissions on the UAE, U.N. Doc. A/HRC/WG.6/29/ARE/3, 3, 5, 8 (Nov. 3, 2017) (on the excessive punishments, pre-trial detention, and the death penalty; on fundamental freedoms; and on violations of the rights of women, migrant workers, and other vulnerable groups); see also U.N. Human Rts. Council Working Group on Arbitrary Detention, Opinion No. 35/2015 concerning Mahmoud Abdulrahman al-Jaidah (UAE), U.N. Doc. A/HRC/WGAD/2015/35 (Dec. 21, 2015); RSF Press Rankings, *supra* note 37 (showing that the UAE ranks equally low in media freedom standards, 133/180, dropping five places since last year).

⁵² *Bidoons* (*bidūn jinsīyah*) are the hundreds of thousands of persons, typically descendants of Bedouins, that are considered either as foreign nationals or illegal immigrants. See Al-Awadhi, *supra* note 19, at 560; *Without Citizenship: Statelessness, Discrimination and suppression in Kuwait*, OPEN SOC’Y JUST. INITIATIVE 9 (discussing also cases of intersectional discrimination, e.g., against women and children). See also *Kuwait: Events of 2018*, HUMAN RTS. WATCH, <https://www.hrw.org/world-report/2019/country-chapters/kuwait> (last visited Mar. 17, 2020) (noting that “Two-thirds of Kuwait’s population is comprised of migrant workers, who remain vulnerable to abuse despite recent reforms.”). Cf. Kamran Hashemi, *Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation*, 29 HUMAN RTS. Q. 194, 198 (2007); Keane & Kyriazi, *supra* note 1, at 229-30. *Bidoons*, however, exist in other Middle Eastern countries, including in Qatar. See U.N. Stakeholders’ Submissions on Qatar, *supra* note 42, at ¶¶ 62-65 (noting the existence of approximately 1,200 to 1,500 of *bidoons*); Human Rts. Council, Rep. Summary of Stakeholders’ Submissions on the UAE, Qatar, *supra* note 51, at ¶¶ 61-64.

⁵³ Cf. Çalı, et al., *supra* note 1, at 49 (noting also that Kuwait has been less responsive than Qatar and Bahrain with respect to human rights treaty bodies’ recommendations for legislative reform).

⁵⁴ AI report 2017/8 at 229.

⁵⁵ See *Kuwait*, REPORTERS SANS FRONTIÈRES [REPORTERS WITHOUT BORDERS], <https://rsf.org/en/kuwait> (last visited Mar. 17, 2020).

⁵⁶ See generally Shafeeq Ghabra, *Kuwait: At the Crossroads of Change or Political Stagnation*, MIDDLE E. INST. (Middle E. Inst. Pol’y Paper No. 2014-2, May 2014), https://www.mei.edu/sites/default/files/publications/Ghabra%20Policy%20Paper_0.pdf (arguing that “Kuwait’s partial democracy breeds crises . . . The primary problem is that with the exception of implementing voting rights for women in 2006, Kuwait has not developed its democratic traditions since 1962, nor has it amended the constitution to develop its democracy.”).

presumed deaths of two Emirati Princesses, Shamsa and Latifa,⁵⁷ followed by the subsequent “escape” and request for asylum in Europe by Princess Haya.⁵⁸

In the case of Qatar, indications are mixed and do not allow for easy conclusions. A good example is the right to education, in which Qatar has invested to an unparalleled extent. Projects and initiatives such as Qatar Foundation’s *Education City*; the World Innovation Summit on Education (“WISE”); Education Above All (“EAA”); the Qatar “Fund for Development” funding of UNICEF’s *Education on emergencies*;⁵⁹ and early education strategies for girls⁶⁰ exemplify Qatar’s pledge to enhance education. Even so, it cannot be assumed that the equivalent “right to education” or the “rights of the child” are fully implemented. The recent concluding observations of the Committee monitoring the Convention on the Rights of the Child (“CRC”) on the State’s reports are particularly critical, pointing to lack of focus in policies and nonexistent evaluation mechanisms,⁶¹ as well as “multiple gender-based discrimination from the earliest stages of life”

⁵⁷ See e.g., U.N. Human Rts. Council Working Group on Enforced or Involuntary Disappearances, Communications, Cases Examined, Observations and Other Activities Conducted by the Working Group, U.N. Doc. A/HRC/WGEID/115/1, ¶¶ 115-16 (Aug. 16, 2018). See generally U.N. Human Rts. Council Working Group on Enforced or Involuntary Disappearances, Communications Transmitted, Cases Examined, Observations Made and Other Activities Conducted by the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. A/HRC/WGEID/118/1 (July 30, 2019).

⁵⁸ See generally Amy Gounia, *Princess Haya: Dubai Ruler’s Wife Seeks ‘Forced Marriage Protection Order’ in U.K. Court*, TIME MAG. (July 31, 2019), <https://time.com/5639661/dubai-princess-haya-forced-marriage-protection-order/>. The former two princesses have not been seen in public since 2010 and 2018 respectively. In a video made by Princess Latifa (and released by her lawyer in the event that she would be endangered), she accuses the Dubai ruler, Mohammed al Maktoum, for regularly using torture and abductions to eliminate his enemies, including progressive women as herself and her sister.

⁵⁹ See e.g., Shaikha Moza Bint Naser, *Message from Our Founder*, EDU. ABOVE ALL, <https://educationaboveall.org/#!/about/4> (last visited Mar. 17, 2020); see also Obiora Okafor, *Preliminary Findings of the United Nations Independent Expert on Human Rights and International Solidarity, Mr. Obiora C. Okafor, at the End of His visit to Qatar*, OFF. HIGH COMMISSIONER ON HUMAN RTS. (Sept. 10 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24969&LangID=E>.

⁶⁰ See generally Comm. on the Rts. of the Child, *Concluding Observations on The Combined Third and Fourth Periodic Reports of Qatar*, U.N. Doc. CRC/C/QAT/CO/3-4 (June 22, 2017) [hereinafter CRC, *Concluding Observations on Qatar*]; cf. Keane & Kyriazi, *supra* note 1, at 230 n.143 (referring to the CRC 2009 report).

⁶¹ See CRC, *Concluding Observations re Rep. of Qatar*, *supra* note 60, at ¶ 7.

relating to education for girls.⁶² Furthermore, the CRC points to persistence of violence against children and lack of “special protection measures” for vulnerable children,⁶³ including corporal punishment and other harmful practices.⁶⁴ This is also true relating to specific obligations accompanying the right to education, such as “accessibility” (i.e., available to all without discrimination) and “acceptability” (i.e., that education has to be “relevant, culturally appropriate and of good quality”).⁶⁵ In fact, according to the World Bank, school children in GCC countries “will finish 12.4 to 13.3 years of schooling, but only learn the equivalent of 7.6 (in Kuwait), [8.5 (in Qatar)] to 9.6 (in Bahrain)”⁶⁶; while “nearly half of GCC students on average—fail to gain the minimum understanding of math, science, and reading.”⁶⁷

B. A “Human Rights” Shift Vis-à-vis International Human Rights Obligations?

There is currently no indication of a clear legal shift with regard to the undertaking of obligations at the international level to fully comply with current human rights standards. In addition, as mentioned above, only three States maintain national human rights institutions (“NHRIs”). For example, in the case of Oman⁶⁸ and Bahrain,⁶⁹ these institutions have not been accredited by the relevant international

⁶² *Id.* at ¶¶ 13-14.

⁶³ *Id.* at ¶¶ 23-27; *see also* U.N. Stakeholders’ Submissions on Qatar, *supra* note 42, at ¶¶ 54-56.

⁶⁴ *See* CRC, Concluding Observations re Rep. of Qatar, *supra* note 60, at ¶¶ 24-25; *see also* U.N. Stakeholders’ Submissions on Qatar, *supra* note 42, at ¶¶ 42.

⁶⁵ *See* Comm. on Econ., Soc. & Cultural Rts., General Comment No. 13: The Right to Education, U.N. Doc. E/C.12/1999/10, ¶ 6 (Dec. 8, 1999).

⁶⁶ *See* WORLD BANK REPORT 2019, *supra* note 18, at 38 (for the remaining countries, it is 8.1 in Saudi Arabia; 8.9 in Oman, and 9.5 in the UAE).

⁶⁷ *See id.* at 40.

⁶⁸ *See e.g.*, U.N. Human Rts. Council Working Group on the Universal Periodic Review, National Rep. Submitted in Accordance with paragraph 5 of the Annex to Human Rts. Council resolution 16/21 (Oman), U.N. Doc. A/HRC/WG.6/23/OMN/1, ¶ 71 (Sept. 8, 2015) (noting that [the Omani NHCR] has received a B grading from the International Coordinating Committee of National Human Rights Institutions due to lack of full financial independence).

⁶⁹ *See e.g.*, HRC Comm., Initial Rep. on Bahrain, *supra* note 49, at ¶ 9 (noting that “the [Bahraini] Institution lacks the independence to perform its functions”). *See also* FREEDOM OF ASSOCIATION IN THE ARABIAN GULF: THE CASE OF BAHRAIN, KUWAIT AND YEMEN, INT’L FED FOR HUMAN RTS. & ARAB INST. FOR HUMAN RTS. 12 (2009) (noting that “although the [Bahraini] Constitution guarantees the right to freedom of association, the Bahraini legal and policy framework regarding freedom of association is restrictive and gives the authorities a wide scope of control.”).

bodies for compliance with the Paris Principles and their role appears to be minimal, while even the Qatari commission, which has received such accreditation,⁷⁰ has been criticized for substantial lack of independence.⁷¹

1. The Stance of GCC States Towards Human Rights Instruments

Gulf States hold a similarly hesitant approach in relation to human rights treaties, a viewpoint which has not improved over the years. Three observations may be useful here.

First, accession to human rights treaties in the region remains parsimonious. Following its liberation, Kuwait was the first Gulf State to ratify the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and the International Covenant on Civil and Political Rights (“ICCPR”),⁷² while Bahrain did so only a decade later, in 2006. Qatar was the third State to ratify, albeit another decade later, as it will be discussed in the last section of this paper. At the same time, however, GCC States still fall short of ratifying even human rights instruments to which there is quasi-universal adherence—such as the Genocide Convention⁷³ or the Refugee Convention.⁷⁴ In fact, Gulf States generally have no laws on asylum. The one exception is Qatar, which adopted the first asylum law in the region in September 2018 with numerous ambiguities and shortcomings.⁷⁵

⁷⁰ See e.g., U.N. Stakeholders’ Submissions on Qatar, *supra* note 42, at ¶ 25.

⁷¹ See e.g., MENA Rights group, *Report submitted to the UN HRC for the 2nd cycle of Qatar’s UPR* (October 2018) at 5, <http://www.menarights.org/sites/default/files/2019-01/Qatar%20-%20Universal%20Periodic%20Review%20-%20October%202018.pdf> (noting that, despite formal accreditation for compliance with the Paris principles by the Global Alliance of National Human Rights Institutions “the nomination, appointment and dismissal of [the Qatari NHRC members] is subject to approval by the emir’ under Law 17/ 2010.”).

⁷² *UN treaty database*, ratification status by country or by treaty: Kuwait, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=92&Lang=EN.

⁷³ To date, Qatar and Oman have not ratified the Genocide Convention; while the UAE that has ratified the Genocide Convention, it has placed a reservation with respect to article 9 and ICJ’s jurisdiction.

⁷⁴ See *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, U.N. HUMAN RTS. COUNCIL, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> (last visited Mar. 17, 2020).

⁷⁵ Law on the Regulation of Political Asylum (Qatari Law 11/2018), as the name stipulates, encompasses “political refugees” and “political persecution” alone, *see*

Second, GCC States have consistently avoided recognizing the competence of treaty bodies to examine individual complaints, therefore reducing their monitoring powers. This is true for the Optional Protocols to both the ICCPR and the ICESCR, as well as for the relevant mechanisms of the Convention against Torture (“CAT”)⁷⁶ and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”).⁷⁷ Additionally, this is equally true as regards the International Convention for the Protection of All Persons from Enforced Disappearance (“CED”).⁷⁸ As a result, and in the absence of an efficient regional mechanism in the GCC (and with the Arab Charter being the only pertaining regional instrument),⁷⁹ the only way for individuals to bring human rights violations to light and eventually raise accountability demands is through procedures that do not depend on state consent. This is true with respect to the special procedures of

<https://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=6677&lawId=2284&language=en>. See also MENA Rights group, *supra* note 71, at 10 (noting that article 13 states that “individuals may be deported if they participate in political activities while in Qatar.”).

⁷⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT] art. 22, Feb. 4, 1985, 1465 U.N.T.S. 85.

⁷⁷ See e.g., E.g. CEDAW, Reservations of Bahrain, Kuwait, Oman, Qatar, United Arab Emirates, Kingdom of Saudi Arabia to article 29 paragraph 1, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en#EndDec Likewise Gulf States that have ratified the CEDAW have placed reservations on provisions that allow submission of related disputes to either arbitration or the ICJ (e.g., the reservation of Bahrain reads: “with reference to article IX of the Convention the Government of the State of Bahrain declares that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the express consent of all the parties to the dispute is required in each case. Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations Relating to the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/SP/2006/2, at 9 (Apr. 10, 2006) [hereinafter CEDAW Reservations 2006]. A declaration by Kuwait reads: “The Government of Kuwait declares that it is not bound by the provision contained in article 29, paragraph 1.” *Id.* at 17. The reservation of Qatar reads: “In accordance with article 29, paragraph 2, of the Convention, the State of Qatar declares, under the terms of that text, that it does not consider itself bound by paragraph 1 of that article.” Convention on the Elimination of All Forms of Discrimination Against Women, Qatar Reservation, 1249 U.N.T.S. 13 (Apr. 29, 2009)).

⁷⁸ Convention for the Protection of All Persons from Enforced Disappearance [CED] art. 31, Feb. 6, 2007, 2716 U.N.T.S. 3.

⁷⁹ Cf. Çalı et al., *supra* note 1, at 37 n.46); Keane & Kyriazi, *supra* note 1, at 222.

the U.N. Human Rights Council,⁸⁰ or the individual communications procedure before the U.N. Working Group on arbitrary detention.⁸¹

Third, GCC states have been hostile to instruments that cannot be tailored to their needs and which may involve exposure of nationals to criminal responsibility—as is the case with the Rome Statute of the International Criminal Court.⁸² Such omission, which is typical of Asian⁸³ (and Muslim)⁸⁴ states, is certainly not due to negligence, especially given that GCC States have been proactive in ratifying other instruments negotiated as “package deals”—as is the case with the United Nations Convention for the Law of the Sea (“UNCLOS”), which was ratified by each GCC States.

2. Persistence of Reservations Against Human Rights Treaties

In addition to these low ratification rates, GCC States have typically placed reservations upon ratification or accession, many times of a broad and generic nature in a manner that undermines not only the effectiveness of the treaties in question,⁸⁵ but also the very concept of the universality of human rights. “Sharia-related reservations,” albeit not as common as it is generally thought,⁸⁶ are typically held to be invalid under international law⁸⁷ (while, according to the prevalent

⁸⁰ U.N. Human Rts. Council, Res. 5/1. Institution-building of the United Nations Human Rights Council (June 18, 2007) (regarding former 1503 procedure).

⁸¹ See U.N. Human Rights Council, *Methods of work of the Working Group on Arbitrary Detention*, ¶¶ 15-16, U.N. Doc. A/HRC/36/38 (Jul. 13, 2017); U.N. Comm'n on Human Rts., Res. 1991/42: Question of Arbitrary Detention, U.N. Doc. E/CN.4/RES/1991/42, ¶¶ 2-3 (Mar. 5, 1981) (on the mandate of the group); U.N. Comm'n on Human Rts., Res. 1993/36, ¶ 4 (Mar. 5, 1993) (*ex officio* procedures).

⁸² For a list of ratifications of the Rome statute, see *State Parties—Chronological List*, INT'L CT. JUST., https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/states%20parties%20_%20chronological%20list.aspx (last accessed Dec. 10, 2019).

⁸³ See Daley Birkett, *Twenty Years of the Rome Statute of the International Criminal Court: Appraising the State of National Implementing Legislation in Asia*, 18 CHINESE J. INT'L L. 353, [INSERT PIN CITE] (2019).

⁸⁴ See Mohamed Elewa Badar, *Islamic Law (Shari'a) and the Jurisdiction of the International Criminal Court*, 24 LEIDEN J. INT'L L. 411, [INSERT PIN CITE] (2011).

⁸⁵ Alain Pellet (Special Rapporteur of the ILC on Reservations to Treaties), *Tenth Rep. on Reservations to Treaties*, ¶¶ 88-92, U.N. Doc. A/CN.4/558 and Add.1-2 (June 30, 2005) (referring to the views of Roberto Ago).

⁸⁶ MASHOOD A. BADERIN, INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW 5 (2003).

⁸⁷ Pellet, *supra* note 85, at 169-70, ¶¶ 111-14 (discussing inter alia the “Sharia-reservations”). Among other things, Pellet found that “it is the impossibility of

view of human rights bodies, they may even be “severed” from the instrument of ratification).⁸⁸ Arguably, most notorious example is Saudi Arabia’s reservation to the CEDAW, namely that it “will not implement those provisions that conflict with the Sharia.”⁸⁹ Saudi Arabia is not unique, however, as other GCC States have also issued reservations that would subject the interpretation and implementation of the CEDAW to Shari’a. The reservation of Oman, for instance, to the CEDAW is similar to that of Saudi Arabia.⁹⁰

Other reservations (and interpretative declarations or statements) are hostile to the very concept of equality, undermining the concept of human rights as a whole. A good example may be offered by an Emirati declaration, according to which equal legal capacity between men and women under the CEDAW “violates the rules of inheritance established in accordance with the precepts of the Sharia”⁹¹ as well as the reservations of Kuwait, Bahrain, and Qatar to CEDAW provisions on gender equality and freedom of movement, as both these rights contrast with the prerequisites of the concept of “male guardianship” (*pardah*).⁹² Consequently, women in the Gulf may still require

assessing the compatibility of such reservations with the object and purpose of the treaty, rather than the certainty that they are incompatible, which makes them fall within the purview of article 19 (c) of the 1969 Vienna Convention.”

⁸⁸ U.N. Human Rts. Comm., General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, ¶ 19, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 4, 1994); *see also* *Belilos v. Switzerland*, 132 Eur. Ct. H.R. (ser. A) (1988). *See e.g.*, Yvonne Donders, *Cultural Pluralism in International Human Rights Law: The Role of Reservations*, in *THE CULTURAL DIMENSION OF HUMAN RIGHTS* 205-39 (Ana Vrdoljak ed., 2011). *See generally* INETA ZIEMELE, *RESERVATIONS TO HUMAN RIGHTS TREATIES AND THE VIENNA CONVENTION REGIME: CONFLICT, HARMONY OR RECONCILIATION* (2004); *see also generally* Ryan Goodman, *Human Rights Treaties, Invalid Reservations, and State Consent*, 96 AM. J. INT’L. L. 531 -60, [INSERT PIN] (1994).

⁸⁹ “[The Government of Saudi Arabia declares that it will] implement the provisions [of the above Convention], providing these do not conflict with the precepts of the Islamic *Shariah*.” JOSHUA CASTELLINO & KATHLEEN A. CAVANAUGH, *MINORITY RIGHTS IN THE MIDDLE EAST* 63 n.345 (2013).

⁹⁰ “All provisions of the Convention not in accordance with the provisions of the Islamic Shari’ah and legislation in force in the Sultanate of Oman.” *Id.* at 61 n.333.

⁹¹ The UAE has placed numerous reservations, including to the provision requesting States to eliminate laws, customs, and traditions that go against CEDAW art. 2, and the provision on gender equality, art. 15(2). *See* Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], art. 2, 15(2), Dec. 18, 1979, 27 U.S.T. 1909, 1249 U.N.T.S. 13.

⁹² The most “problematic” provisions are *id.* art. 2(a), 9(2), 15(1), and 16(1)(a), (c), (f). *See also* Donders, *supra* note 88, at 234.

permission by their guardian (typically their father or husband) to leave home, work, drive, open a business, or travel abroad. This is in contrast with Saudi Arabia, where permission for women to travel, until August 2019, was granted through a governmental “App.”⁹³

These rigid attitudes of the Gulf States denote a different perception of the very concept of human rights as rights granted to “all human beings, born free and equal in dignity and rights.”⁹⁴ Discrimination is entrenched in Gulf societies, and signs of a prospective change are not sufficiently strong to support the postulate of better human rights compliance in the region – in general.⁹⁵ This is corroborated by the fact that, even when GCC States amend their reservations in certain areas of civil liberty or gender equality, these changes are not with the purpose of full alignment to human rights commitments. For instance, in 2016, Bahrain replaced the text of some of its reservations to the CEDAW (holding inapplicability insofar as the treaty conflicted with the Shari’a) with an ambiguous new formula, namely that it will implement the obligations stemming from Articles 2, 16, and 15 (4), yet “without breaching the provisions of the Islamic Shariah.”⁹⁶ In similar fashion, Kuwait withdrew its reservations to the CEDAW—with respect to the Kuwaiti Electoral Act—in 2009. This allowed women to vote, yet maintained reservations with respect to nationality of children, which could be determined by their father only,⁹⁷ and

⁹³ Kieran Corcoran, *Apple and Google Should be Ashamed of Their Part in an Infamous Saudi Arabian App That Even the Saudi Government Now Admits Has to Change*, BUS. INSIDER (Aug. 4, 2019), <https://www.businessinsider.com/apple-google-shameful-part-in-saudi-system-absher-2019-8>; CEDAW Comm., Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia, art. 16, 19, 20, U.N. Doc. CEDAW/C/SAU/CO/3-4 (Mar. 14, 2018) [hereinafter CEDAW Comm. Concluding Observations on Saudi Arabia].

⁹⁴ G.A. Res. 217 A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948).

⁹⁵ See *supra* note 1 and accompanying text.

⁹⁶ UN Treaty Database, Declarations and Reservations, June 1, 2016, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV8&chapter=4&lang=en#73

⁹⁷ UN Treaty Database, CEDAW, Kuwaiti Reservation to art. 2, para. 2 (reservation with respect to child nationality, inasmuch as it runs counter to the Kuwaiti Nationality Act, which stipulates that a child’s nationality shall be determined by that of his father), reservation to 16 (f) in relation to “(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children,” inasmuch as it conflicts with the provisions of the *Islamic Shariah*) (“The Government of Kuwait reserves its right not to implement the provision contained in article 9, paragraph 2, of the Convention, inasmuch as it runs counter to the

equal rights between men and women in adoption processes.⁹⁸ Likewise, Qatar in 2009 withdrew its “blanket” reservation to the CRC, which subjected the whole Convention to the principles of Shari’a and national law,⁹⁹ yet maintained a general reservation against two key provisions of the Convention, on obligations related to non-discrimination (article 2) and religious freedom (art 14).¹⁰⁰ Gulf States also maintain reservations with respect to granting the right to a nationality, provisions on which are contained in all relevant human rights treaties.¹⁰¹ This means that children born from women married to a citizen of a different nationality lose their nationality status that would be granted by their maternal side.¹⁰² These types of reservations are additionally problematic, insofar as they raise the question of children born out of wedlock.¹⁰³ These children are still subject to persistent discrimination in the Gulf—akin to *Bidoon* children, children with disabilities, minority children [*Baharna Shia*], *ajam* [foreign] children, and children born to foreign or stateless fathers.¹⁰⁴

Kuwaiti Nationality Act, which stipulates that a child’s nationality shall be determined by that of his father.”). Also see CASTELLINO & CAVANAUGH, *supra* note 89, at 59 n. 323

⁹⁸ *Id.* at 64 n.356 (“The Government of the State of Kuwait declares that it does not consider itself bound by the provision contained in article 16 (f) inasmuch as it conflicts with the provisions of the *Islamic Shariah*, Islam being the official religion of the State.”).

⁹⁹ See UN Treaty Database, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (in 2009, Qatar partially withdrew its general reservation, ‘which shall continue to apply in respect of the provisions of articles 2 and 14 of the Convention’); see also Hashemi, *supra* note 52 at 198,

¹⁰⁰ *But see* International Covenant on Civil and Political Rights [ICCPR], Qatari Reservations, 999 U.N.T.S. 171 (May 21, 2018).

¹⁰¹ *But see* CEDAW Reservations 2006, *supra* note 77, at 16 (re Kuwaiti Reservations to art. 9); Convention on the Rights of the Child [CRC], Nov. 20, 1989, 1577 U.N.T.S. 3, Kuwaiti Reservations (June 7, 1990) (regarding art. 7); CRC, Emirati Reservations (Jan. 3, 1997) (regarding art. 7); CRC, Omani Reservations (Dec. 9, 1996) (regarding art. 7).

¹⁰² See generally Al-Awadhi, *supra* note 19, at 561.

¹⁰³ Hashemi, *supra* note 52, at 207 (referring to the CRC: A Guide to the “*Travaux Préparatoires*” and noting that “the only matter of concern for some Muslim states with regard to [article 2] was the issue of children born out of wedlock.”).

¹⁰⁴ CRC Comm., Concluding Observations on Bahrain, *supra* note 49, at ¶16; CRC, Concluding Observations on Qatar, *supra* note 60, at ¶16 (2017); CRC Comm., Concluding Observations on the Second Periodic Rep. of the United Arab Emirates, ¶ 23, U.N. Doc. CRC/C/ARE/CO/2 (2015).

Moreover, reservations are far from sporadic. Rather, they are placed against the full range of human rights instruments. By way of illustration, Qatar made a number of interpretative statements upon accession to the two Covenants in 2018, as well as formal reservations in relation to gender equality¹⁰⁵ and “the ability of workers to form trade unions.”¹⁰⁶ Both Kuwait (in 1996) and Bahrain (in 2006) placed similar reservations, including the following: in relation to the prohibition of the right to strike,¹⁰⁷ the exclusion of non-Kuwaiti workers from social security benefits and welfare,¹⁰⁸ and gender equality.¹⁰⁹ Likewise, the UAE declared upon accession to the CAT that “lawful sanctions applicable under national law, or pain or suffering arising from or associated with or incidental to these lawful sanctions, do not fall under the concept of “torture” . . . under article 1 of the Convention against Torture (“CAT”).”¹¹⁰

The only treaty that has been viewed more sympathetically in the Gulf is arguably the Convention on the Rights of Persons with Disabilities (“CRPD”). The CRPD has been ratified by all GCC States,

¹⁰⁵ See International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 1966, 993 U.N.T.S 3, Qatari Reservation (May 21, 2018) (“The State of Qatar does not consider itself bound by the provisions of Article 3 of the International Covenant on Economic, Social and Cultural Rights, for they contravene the Islamic Sharia with regard to questions of inheritance and birth.”).

¹⁰⁶ ICESCR art. 8; see ICESCR, Qatari Statement (May 21, 2018) (Qatar stated that it “shall interpret that what is meant by ‘trade unions’ and their related issues stated in Article 8 of the International Covenant on Economic, Social and Cultural Right[s], in line with the provisions of the Labor Law and national legislation. The State of Qatar reserves the right to implement that article in accordance with such understanding.”).

¹⁰⁷ ICESCR, Bahraini Reservation (Sept. 27, 2007) (declaring that it will implement [the right to strike] only insofar it “shall not prejudice its right to prohibit strikes at essential utilities.”).

¹⁰⁸ See ICESCR, Kuwaiti Interpretive Declaration Regarding art. 9 (May 21, 1996) (“The Government of Kuwait declares that while Kuwaiti legislation safeguards the rights of all Kuwaiti and non-Kuwaiti workers, social security provisions apply only to Kuwaitis.”); See ICESCR, Kuwaiti Reservation Regarding art. 8, para. 1(d) (May 21, 1996) (“The Government of Kuwait reserves the right not to apply the provisions of article 8, paragraph 1 (d).”).

¹⁰⁹ See *supra* notes 97 and 98 with respect to child nationality and adoption.; *cf.* CEDAW, Bahraini Reservation to art. 2, para. 2 (explaining reservation is rooted in avoiding a breach of Islamic Shari’a provisions).

¹¹⁰ See CAT, UAE Declaration (July 19, 2012) (stating that “lawful sanctions applicable under national law, or pain or suffering arising from or associated with or incidental to these lawful sanctions, do not fall under the concept of ‘torture’ defined in article 1 of this Convention or under the concept of cruel, inhuman or degrading treatment or punishment mentioned in this Convention.”).

with limited reservations or declarations,¹¹¹ and interestingly, it is the only Convention for which Saudi Arabia alone has ratified the Optional Protocol and accepted the CRPD inquiry procedure.¹¹² This *per se* is of course a positive development.¹¹³ This stance may be associated to the fact that accessibility as such is largely a matter of resources, and arguably associated to the Shari'a—specifically to the fact that both the Qur'an and the Sunnah provide for a general obligation of care towards persons with disabilities,¹¹⁴ as well as for some exceptions from religious obligations aiming at their accommodation.¹¹⁵ Even so, the prevalent perception of disability in the Muslim world, and specifically in the Gulf, is “medical” and charity-based, especially since Islam denies persons with disabilities all legal capacity and excludes them from acquisition and social welfare.¹¹⁶ As such, it is in full contrast to the full-equality and human rights approach of the CRPD, clashing with the concept of disability culture as a social

¹¹¹ See Convention on the Rights of Persons with Disabilities [CRPD], Mar. 30, 2007, 2515 U.N.T.S. 3, Kuwaiti Reservation (Aug. 22, 2013) (relating to legal capacity and the (im)permissibility of relations outside marriage, to art. 12, para. 2: “The enjoyment of legal capacity shall be subject to the conditions applicable under Kuwaiti law;” and also to art. 19, para. (a): “This paragraph shall not be interpreted to permit illicit relations outside legitimate marriage;” and art. 25, para. (a): “The care in question shall not imply recognition of illicit relations outside legitimate marriage.”).

¹¹² Optional Protocol to the Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2518 U.N.T.S. 283 (signed by Qatar and the UEA and ratified by Saudi Arabia only).

¹¹³ Cf. Çalı et al., *supra* note 1, at 56 (arguing that “the trend for increased ratifications of UN human rights treaties, in particular, the recent (and quick) GCC-wide ratification of the CRPD, show that the GCC states consider UN human rights treaty ratification an important aspect of integrating into the international system.”).

¹¹⁴ Mohammed Morad, Yusuf Nasri & Joav Merrick, *Islam and the Person with Intellectual Disability*, 5 J. RELIGION, DISABILITY & HEALTH, 65, 68 (2001).

¹¹⁵ For example, from fasting, Qur'an, Surah al-Baqarah 2:184, or contributing to war, Qur'an, Surah al-'Ankabūt 29:91).

¹¹⁶ See, e.g., Qur'an, Surah an-Nisā' 4:5 “[A]nd do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness.” See also Liaquat Ali Khan, *Protection of Languages and Self-Expressions Under Islamic Law*, J. TRANS. L. & POL'Y 19, 94-96 (2012); Brenton Kinker, *An Evaluation of the Prospects for Successful Implementation of the CRPD in the Islamic World*, 35 MICH. J. INT'L. L. 443, 448 (2014); Eleni Polymenopoulou, *Cultural And Linguistic Identity of Persons with Disabilities, Including Sign Languages and Deaf Culture*, in THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY 898, 903-05 (Ilias Bantekas, Michael Ashley Stein & Dimitris Anastasiou eds., 2018).

construct.¹¹⁷ The substantial reservations of Kuwait on the matter are indicative, not only in relation to the right to a nationality and adoption processes as discussed above, but also, in relation to the “enjoyment of legal capacity.”¹¹⁸ Surely, in some cases steps for inclusion of persons with disabilities have been taken, yet this remains exceptional. The case of Qatar stands out presumably due to the willingness of Shaikha Hessa al Thani, an active member of the U.N. Commission for Social Development, to improve the conditions of children with disabilities and promote a culture of inclusion.¹¹⁹ Even Qatar, however, lacks real national strategies for inclusion let alone equal access to employment. In fact, the Qatari 2004 disability law has not been rectified since the ratification of the CRPD in 2006.¹²⁰ National legislation still authorizes institutionalization without “free and informed consent of the person,”¹²¹ with violence against people with disabilities remaining largely unreported.¹²² Moreover, there is also a complete lack of data concerning the protection of women against exploitation.¹²³

C. Addressing the Root Causes

The causes that are typically advanced for this type of incompatibility between the Gulf’s own perception of human rights and international human rights standards are usually Shari’a-based, on the basis of an assessment of the reservations’ validity. Yet, the Gulf’s own perception of rights reveals that the question is much more perplex than

¹¹⁷ See, e.g., CRPD Comm., Concluding Observations on the Initial Report of Oman, ¶ 7, U.N. Doc. CRPD/C/OMN/CO/1 (Apr. 17, 2018) (on the lack of adequate national legislation in line with the CRPD approach). See also Michael Stein & Janet Lord, *Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential*, 32 HUM. RTS. Q. 689, [INSERT PIN CITE] (2010); see generally Polymenopoulou, *supra* note 116.

¹¹⁸ Kuwait’s view on art. 12, para. 2 is that “the enjoyment of legal capacity shall be subject to the conditions applicable under Kuwaiti law.” Kuwait has also placed another reservation, to art. 25(a), in relation to the prohibition of illicit relations outside legitimate marriage. See materials cited *supra* note 111.

¹¹⁹ Keane & Kyriazi, *supra* note 1, at 212.

¹²⁰ CRPD Comm., Concluding Observations on the Initial Report of Qatar, U.N. Doc. CRPD/C/QAT/CO/1 (Oct. 2, 2015) [hereinafter CRPD Comm., Concluding Observations on Qatar]; cf. Keane & Kyriazi, *supra* note 1, at 208-09.

¹²¹ CRPD Comm., Concluding Observations on Qatar, *supra* 120, at ¶ 28.

¹²² *Id.* at ¶ 31.

¹²³ See *id.* at ¶ 42.

a simple doctrinal debate on human rights and Islam, or a matter of reservations.

1. Is Shari'a the Problem?

The concept of a fictitious “clash of civilizations”—including between the West and Islam—has been quasi-institutionalized and perpetuated in a stereotype pertaining virtually to all matters related to the Muslim world. Huntington’s ideas expressed for the first time in *Foreign Affairs*¹²⁴ have been influential in Western academia, resulting in a generalized “trend” suggesting that Islamic culture is simply different from Western culture, thereby fueling the image of “cultural conflict” between Islam and the “others” (chiefly Western States).¹²⁵ As a result, various authors have deduced that Shari’a is the principal issue for this low level of compliance with current human rights standards. This position, however, cannot be sustained today, as the geo-political structures of Gulf States have culminated into a model of governance that incorporates features of various legal traditions, rather than Shari’a alone.

i. The Emergence of a Parallel Legal Universe

While Islam is a *principal* source of legislation in the GCC States’ constitutions, as discussed above, GCC states’ legislative framework as a whole is *not* governed by the Shari’a. A substantive part of the entire body of legal affairs in the Gulf, including in Saudi Arabia, is *not* subject to Shari’a law. This does not mean that Shari’a law is in desuetude in the Gulf. On the contrary, Shari’a still applies primarily in personal and criminal matters,¹²⁶ but even those contexts its role is

¹²⁴ Samuel Huntington, *The Clash of Civilizations?*, 72 FOREIGN AFF. 22, 25 (1993). See also Tom Farer, *The Clash of Cultures, the Tension Within Liberalism, and the Proper Limits of Tolerance*, 36 HUM. RTS. Q. 1, 18–19 (2014); Emon, *supra* note 29, at 309–10; Keane & Kyriazi, *supra* note 1, at 869–70.

¹²⁵ See Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, 15 MICH. J. INT’L. L. 307, 308–10 (1994) [hereinafter Mayer, *Universal Human Rts. Versus Islamic Human Rts.*]. See also BADERIN, *supra* note 86, at 45–46.

¹²⁶ See, e.g., Al-Qānūn al-Atihādīy Raqam 28 li-Sinnah 2005, Qānūn al-Ahwal ash-Shakhshīah [Fed. Law no. 28 of 2005, Law of Personal Affairs] (U.A.E.) (Arabic version available at: <http://www.dji.gov.ae/Lists/DJIBooks/Attachments/79/Ahwal%20Shakhsia%20Big%20WEB.pdf>) (unofficial English translation available at: <https://legaladviceme.com/legislation/140/uae-federal-law-28-of-2005-on-personal-status>) (which is primarily based on the Shari’a). See also Comm. on the

diminishing. Qatar is a good example of this phenomenon. Article 1 of the criminal code¹²⁷ subjects Muslims to the Shari'a. In practice, however, the country's Shari'a court only exercises jurisdiction over family disputes and the regular criminal courts apply the (secular) criminal code to Muslims and non-Muslims alike, albeit the courts do have access to the Shari'a if they so wish. This, by implication, leaves out all areas related to finance, commerce, banking, tax, energy, and other areas of law, whereby the preeminent legal model followed is "secular" civil law. Saudi Arabia, despite its long hostility to arbitration and foreign commercial laws, recently adopted the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration and has set up specialist commercial tribunals.¹²⁸

Common law, and particularly English law, is increasingly used as the governing law in transnational contracts in the Gulf, including between Gulf-based companies. At the same time, hybrid commercial courts, such as the Qatar Financial Centre's Civil and Commercial Court ("QFC") and the Dubai International Financial Centre ("DIFC") courts, inspired by the English Commercial Court, aim to cement legal certainty, uniformity, and contractual familiarity with a view to increasing commercial transactions.¹²⁹ The QFC, for instance, is meant

Elimination of Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Eighteenth to Twenty-First Periodic Reps. of States Parties Due in 2015 (U.A.E.), ¶ 40, U.N. Doc. CERD/C/ARE/18-21, (May 17, 2016) [hereinafter CERD Comm., Consideration of U.A.E. Reps.] (noting that the Code "covers issues that are clearly determined by the religion and are incontrovertible.").

¹²⁷ See Qānūn Raqam 11 li-Sinnah 2004: Bi-Iṣḍār Qānūn al-'Aqūbāt [Law no. 11 of 2004: Issuing the Penal Code], art. 1 (Qatar) (English translation available at: <https://www.almeezan.qa/LawPage.aspx?ID=26&language=en>) (Arabic version available at: <https://www.almeezan.qa/LawPage.aspx?ID=26&language=ar>).

¹²⁸ Reem Shamseddine, *Saudi Arabia Sets Up Commercial Courts to Expedite Investment*, REUTERS (Oct. 16, 2017, 12:04 PM), <https://www.reuters.com/article/us-saudi-court/saudi-arabia-sets-up-commercial-courts-to-expedite-investment-idUSKBN1CL2DT>. Nizām al-Taḥkīm, Marsūm Malakīy Raqam M/34, bi-Tārīkh 24 Jumādā 1433 [Law of Arbitration, Royal Decree No. M/34 (Apr. 5, 2012)] (Saudi Arabia), for example, is based on UNCITRAL's Model Law of Commercial Arbitration. See generally U.N. Comm'n on International Trade Law [UNCITRAL], Model Law on International Commercial Arbitration (1986) (amended 2006).

¹²⁹ See, e.g., Andrew Dahdal & Francis Botchway, *A Decade of Development: The Civil and Commercial Court of the Qatar Financial Centre*, 34 ARAB L. Q. 1 (2019). See also Gabriela Knaul (Special Rapporteur on the Independence of Judges and Lawyers), *Rep. on the Independence of Judges and Lawyers*, ¶ 29, U.N. Doc. A/HRC/29/26 (2015).

to apply QFC law and regulations, as well as the law set out by the parties in their contractual relationships,¹³⁰ with Islamic law playing no role whatsoever other than through party autonomy. In practice, the Court relies almost exclusively on common law principles and case law, not only because these are more familiar to the majority of the judges, but also because English law is predominant in the majority of transnational commercial agreements. In *Leonardo Spa v. Doha Bank Assurance Co LLC*, the QFC Court had to deal with demand guarantees under the Uniform Rules for Demand Guarantees, which were adopted by the International Chamber of Commerce in 1991.¹³¹ Even so, the Court went on to examine the nature of such guarantees by reference to English case law.¹³²

This observation is of course not new. The tensions between modernization and reform were also evident in the Arabian Peninsula pre-independence. In fact, the colonial domination had resulted to parallel jurisdictions: the jurisdiction of the British crown on the one hand, and local or Shari'a-based jurisdiction on the other. This is because contrary to the law applicable to contracts and businesses, personal laws were of no interest to the colonizers.¹³³ The divergence between local customs and modern reforms has been substantial, and is more evident in Saudi Arabia than anywhere else. This was also one of the reasons why the reforms once undertaken by the founder of Saudi Arabia (King Abdulaziz, or Ibn Sa'ūd, as he is more commonly known) to expand growth and development in the country failed. In fact, when Ibn Sa'ūd took power in the late 1930s, he sought to modernize the country, yet he found himself "in conflict with the religious scholars of the puritanical Wahhabi sect with whom he was affiliated."¹³⁴ As a

¹³⁰ See Qānūn Raqam (7) li-Sinnah 2005, bi-Iṣḍār Qānūn Markaz Qaṭr lil-Māl [Qatar Financial Centre Law No. (7) of 2005], art. 7, 8, app'x. 6 (Qatar) (English version available at https://qfcra-en.thomsonreuters.com/sites/default/files/net_file_store/QFC_Law-V3-Oct09.doc.pdf) (Arabic version available at <https://www.almeezan.qa/LawView.aspx?opt&LawID=3987&language=ar>). See also the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rule, art. 11 (available at <https://www.qicdrc.gov.qa/arbitration/legislation-forms>). But see *id.* at art. 4.1, which enunciates the principle of "overriding objective" of the Court, which is to "deal with all cases justly."

¹³¹ *Leonardo S.p.A v Doha Bank Assurance Company LLC* [2019] QIC (F) 6, ¶ 26 (Qatar).

¹³² *Id.* at ¶ 42.

¹³³ WAEL B. HALLAQ, AN INTRODUCTION TO ISLAMIC LAW 115 (2009).

¹³⁴ SFEIR, *supra* note 26, at 42.

result, Shari'a judges blocked Ibn Sa'ūd's regulations and progress stagnated.¹³⁵

ii. *Sharia is not the Problem*

The fact that a particular legal issue is subject to Shari'a law (such as *zinā'* (unlawful sexual intercourse), *riddah* (apostasy), and the other *hudood* crimes) does not necessarily entail a rigid interpretation of Sharia law. No doubt, the discrepancies between universal and human rights standards and Sharia law should be addressed—as is the case with gender inequality, illicit pre-marital relations and male guardianship. These discrepancies should, however, be primarily addressed within the Shari'a itself. This is not an illusion. In fact, the interpretation of Shari'a and the Muslim concept of *fiqh* (human comprehension of Shari'a) varies to an extraordinary degree,¹³⁶ and is subject to both the subtleties of *ijtihad*¹³⁷ and the plurality of the tools of interpretation under the Shari'a.¹³⁸ Taken as a whole, therefore, Shari'a is the most flexible tool that can lead to reform and can neither be crystallized into a single, unified version of a particular school of thought nor can it be subjected to a single interpretation of Islamic jurisprudence.¹³⁹ The

¹³⁵ *Id.* at 42-44. (“Among these regulations was the 1927/1931 establishment of a Commercial court regulation, which besides providing the establishment of a commercial court outside the purview of the Sharia court, regulated land and maritime commerce, bills of exchange and bankruptcy as well as elements of a company, agency and arbitration law. Fearing however that the civil tribunal would willingly reduce their transitional jurisdiction, the Sharia judges blocked the establishment of the tribunal and left the Commercial court regulation in abeyance. . . . By the early 1960s however, it became abundantly clear that the traditional Sharia law and courts were utterly inadequate for conducting the massive development of the country which was totally dependent on foreign law and technology. . . . The result was that a great deal of legislative adroitness, resort to gaps, exemption clauses and manipulation of terminology went into the adoption of modern Statutes in order that Sharia rules remain inviolable.”).

¹³⁶ See generally Anver Emon, *On Reading Fiqh*, in OXFORD HANDBOOK OF ISLAMIC LAW 45-73 (Anver Emon & Ruhmee Ahmed eds., 2018).

¹³⁷ *Ijtihād* denotes general personal reasoning and legal interpretation by the *mu-jtāhid*, the person that has such authority, including context-specific interpretation. See HALLAQ, *supra* note 133, at 19-27. See generally MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 480-83 (3d ed. 2003).

¹³⁸ HALLAQ, *supra* note 133, at 116-17 (discussing the methods of legal reform of Islamic law, through the concepts of *darūra* (necessity); procedural reforms and; *takhayyur/talfiq* (selection/amalgamation); neo-*ijtihad*).

¹³⁹ Abdullah al-Ahsan, *Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights*, 24 J. L. & RELIGION 569, 595 (2008) (discussing common grounds between Islamic values and

appropriation of Shari'a by conservative leaders is the problem, rather than Shari'a itself (and this is why several inspired political leaders of the Muslim world have been in favor of modern reform). As Sfeir notes, even Ibn Sa'ūd who was a devout Wahhabi himself in one of his early decrees ordered Shari'a judges

not to be bound by the Schools of one school of jurisprudence to the exclusion of all others . . . The *ulema* [religious scholars] however, would not countenance the admissibility of other schools of jurisprudence, let alone the introduction of the concept of precedent novel to Islamic law nor the codification of the Sharia.¹⁴⁰

Today such controversy exists in relation to practices that public opinion typically perceives as religious (or at least, quasi-religious), and which are prevalent in Muslim majority regions—for example, polygamous marriages¹⁴¹ and Female Genital Mutilation (“FGM”).¹⁴² It is common for political leaders to advance Shari'a law as justification of such practices and as constituting religious “requirements.” Yet, these justifications misuse the concept of “faith” to maintain patriarchal structures and delay women’s empowerment. The same applies to the justification of repression of religious minorities (including

the values reflected in the UDHR); BADERIN, *supra* note 86, at 228 (arguing that there is no “universal interpretation of the Sharia.”).

¹⁴⁰ SFEIR, *supra* note 26, at 42.

¹⁴¹ See, e.g., Bruce Lawrence, *Muslim Engagement with Injustice and Violence*, in THE OXFORD HANDBOOK OF RELIGION AND VIOLENCE 126, 127-28 (Michael Jer-ryson et al., eds., 2013) (discussing the relevant Qur’anic verses and arguing that “the irony of preceding passage is its misapplication during subsequent Muslim history. Over the course of the centuries, Islamic law overlooked both the context of this revelation—to care equitably for the orphan—and the qualification [the equity requirement].”). See generally Cherif Bassiouni, *Misunderstanding Islam and the Use of Violence*, 37 HOUS. J. INT’L L. 643 (2015); HALLAQ, *supra* note 133, at 140.

¹⁴² This point is discussed by Hope Lewis, *Between Irua and “Female Genital Mutilation”: Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUMAN RTS. J. 21-22 (1995). See e.g., U.N. Human Rts. Council Advisory Committee, Study of the HRC Advisory Comm. on Promoting Human Rights and Fundamental Freedoms Through a Better Understanding of Traditional Values of Humankind, ¶¶ 45-47, U.N. Doc. A/HRC/22/71 (Dec. 6, 2012) (referring to the work of Daniel Bell and also noticing a group of Islamic scholars’ recognition that FGM is a “deplorable inherited custom” incompatible with their understanding of Islamic teachings). Cf. Emon, *supra* note 29, at 97 (referring to Mashood Baderin and claiming that this practice may be wrong for both universalists and cultural relativists as it is a “wrong in itself”). See U.S. D.O.S. Report 2018, *supra* note 33, at 44 (even in Saudi Arabia, this practice is deemed prohibited by the Shari’a.).

dhimmis)¹⁴³ and the lives of LGBTI individuals, usually propagated by Islamists and conservative *ulemas*. Yet, arguments in favor of substantial equality, inclusion, and empowerment for both these groups exist within Shari'a.¹⁴⁴

There are drawbacks in this perception of Shari'a as *not* being the main factor for the non-universal enforcement of human rights. Such drawbacks include the rise of Islamic extremism as a global threat to world peace and the alleged connections of Gulf countries with ISIL, as well as the politicization of Islam within the political bodies of the United Nations. These two issues will be briefly addressed here.

First, the question of Islamic extremism has arisen at a global level and is therefore not a specific characteristic of the Gulf. In all parts of the world, acts of extremism are officially condemned, including within laws on combatting terrorist offences. Qatar may be the leader in condemning cultural extremism, specifically. A good illustration of this point is the *Doha Symposium on Cultural Heritage*, an international conference presided by the Emir of the State of Qatar that took place in Doha shortly after the destruction of the Buddhas of Bamiyan by the Taliban regime in Afghanistan,¹⁴⁵ in which all Gulf leaders condemned the destruction, reiterating the position of Islam in relation to artistic and cultural diversity.

Secondly, indeed some Muslim leaders and their representatives have, to a certain extent, allowed Islam to become a battleground for sensitive issues such as blasphemy, religious minorities, and (arguably also) homosexuality. The stance of the Organization of the Islamic Cooperation ("OIC," and formerly known as "Organization of the

¹⁴³ See Asifa Quraishi, *What if Sharia Weren't the Enemy? Rethinking International Women's Rights Advocacy on Islamic Law*, 22 COLUM. J. GENDER & L. 173, 176 (2011) (arguing that "this imagined opposition between women's rights and Sharia is not only unnecessary, but also counterproductive for both feminist actors and Islamically-minded political activists."). See, e.g., Donna E. Arzt, *The Role of Compulsion in Islamic Conversion: Jihad, Dhimma and Ridda*, 8 BUFFALO HUM. RTS. L. REV. 15 (2002).

¹⁴⁴ See, e.g., ABDELWAHAB BOUHDIBA, SEXUALITY IN ISLAM (Alan Sheridan transl., 2012); SCOTT SIRAJ AL-HAQQ KUGLE, HOMOSEXUALITY IN ISLAM: CRITICAL REFLECTION ON GAY, LESBIAN AND TRANSGENDER MUSLIMS [INSERT PAGE CITED] (2010); see also Javid Rehman & Eleni Polymenopoulou, *Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World*, 37 FORDHAM INT'L L.J. 1, [INSERT PAGE CITED] (2013).

¹⁴⁵ J.M. Butt, *The Buddhas of Bamiyan: Saving Other Possible Cultural Targets*, in PROCEEDINGS OF THE DOHA CONFERENCE OF 'ULAMÁ ON ISLAM AND CULTURAL HERITAGE 53-56, U.N. Doc. CLT/CH/THS/2001/CD/H/1 (2001).

Islamic Conference”),¹⁴⁶ in particular, with its declarations and resolutions, is illustrative in this respect, especially on matters related to Islamophobia¹⁴⁷ and “defamation of Islam.” The concept of defamation of Islam, albeit “dead” today at the United Nations,¹⁴⁸ has been used by the OIC for a long time to allow certain Muslim states to repress (non-Muslim) religious minorities through blasphemy laws.¹⁴⁹ The same is reflected in the 1994 Cairo “Declaration on human rights in Islam,” which has also been drafted in the context of the OIC. This declaration, albeit not pertaining to a particular school of Shari’a, places strict limitations against fundamental rights based on individual and collective obligations of Muslims towards the *Ummah*.¹⁵⁰

The shortcomings of this “politicized” version of Shari’a in the Cairo Declaration have been extensively discussed by both Muslim and non-Muslim scholars. Save perhaps for few exceptions,¹⁵¹ most of

¹⁴⁶ This organization assembles fifty-seven Muslim-majority States throughout the world, Under the Charter of the OIC, and has the aim to “promote and encourage . . . mutual respect and cooperation . . . [and] human rights and fundamental freedoms” CHARTER OF THE ORG. OF ISLAMIC COOPERATION [OIC], pmb. (1972).

¹⁴⁷ See e.g., OIC, SECOND OIC OBSERVATORY REPORT ON ISLAMOPHOBIA 10-11 (May 23-25, 2009) (discussing the “generalized assumption that many Muslims—not just the militant fringe—have negative attitudes toward Westerners in general, not only the policies of some Western governments.”).

¹⁴⁸ In 2010, the Human Rights Council adopted (without a vote) for the first time a Resolution on “combating religious intolerance” alone, which was the first to be endorsed by Muslim and Western countries alike. Its implementation has been agreed to take place in the context of a policy-making process, entitled “the Istanbul process,” in the context of which several meetings have taken place—including in Jeddah under the auspices of the OIC. See Maha Akeel, *A Roadmap for Implementing UNHRC Resolution on Combating Religious Intolerance*, 18 OIC J. 4, 5 (2011); cf. Stephanie Berry & Javid Rehman, *Is “Defamation of Religions” Passé? The UN, OIC and Islamic State Practices: Lessons from Pakistan*, 44 GEO. WASH. L. REV. 431, 453–67 (2012).

¹⁴⁹ See Caleb Holzaepfel, *Can I Say That?: How an International Blasphemy Law Pits the Freedom of Religion Against the Freedom of Speech*, 28 EMORY INT’L L. REV. 597, 614 (2014); MAYER, *supra* note 39, at 187. See also Eleni Polymenopoulou, *A Thousand Ways To Kiss The Earth: Artistic Freedom, Cultural Heritage and Islamic Extremism*, 17 RUTGERS J. L. & RELIGION 39, 55 (2015).

¹⁵⁰ The restrictions to freedom of speech, for example, are a good illustration of this point. Under art. 22(a) of the Cairo declaration, everyone has the right to freedom of expression—as long as it does not conflict with the Shar’ia. In addition, under art. 22(b), “everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari’ah [(hisbah)].” Cairo Declaration of Human Rights in Islam, art. 22(a), (b), U.N. Doc. A/CONF.157/PC/62/Add.18 (Aug. 5, 1990).

¹⁵¹ MAYER, *supra* note 39, at 207 (arguing that “it is hard to see how Islamic schemes of human rights . . . could have positive impact at the long term,” and that

these authors argue that human rights values and Islam are not incompatible—in fact, they are either embedded in the Islamic tradition¹⁵² or at least achieved within Islam.¹⁵³

2. Is Financial Safety the Problem?

The shift from small and insipid former British colonies to global forces at the international marketplace within an extremely short period of time has had two consequences for Gulf States. The first is the increased financial safety of GCC citizens, including reserved seats in public administration¹⁵⁴ and generous allowances.¹⁵⁵ Over the last year, in particular, GCC States have been promoting governmental policies aimed at reducing GCC nationals' unemployment rates—the

“once embodied in the law, Islamic criteria present obstacles to advancing human rights.”); *see also* Mayer, *Universal Human Rts. Versus Islamic Human Rts.*, *supra* note 125, at 327 (arguing that who argues on the “prevalence” of “western human rights” which are based on rationalism and individualism, rather than “faith”). Yet even Mayer finds that “many Muslims have responded positively to human rights ideals.” *Id.* at 313. *Cf.* Shannon Dunn, *Islamic Law and Human Rights*, in *THE OXFORD HANDBOOK OF ISLAMIC LAW*, *supra* note 29, at 827.

¹⁵² By way of example, *see* Khaled Abou El Fadl, *Cultivating Human Rights: Islamic Law and the Humanist Imperative*, in *LAW AND TRADITION IN CLASSICAL ISLAMIC THOUGHT* 167, 173 (Michael Cook et al. eds., 2013) (arguing that “the Islamic tradition has contributed the most [to human rights].”); *see also* BADERIN, *supra* note 86, at 45.

¹⁵³ Al-Ahsan, *supra* note 139, at 592 (arguing that the Cairo Declaration “makes frequent reference to shari’ah but ignores teachings of shari’ah when its member countries repress citizens using torture, and imprisonment without trial and disappearance.”). *Cf.* Kamran Hashemi, *Muslim States, Regional Human Rights Systems and the Organization of the Islamic Conference*, 52 *GER. Y.B. INT’L L.* 75-106 (2009); JOHN ESPOSITO & JOHN VOLL, *ISLAM AND DEMOCRACY* (1996); Dunn, *supra* note 151, at 827; Clark Lombardi & Nathan Brown, *Do Constitutions Requiring Adherence to Shari’a Threaten Human Rights? How Egypt’s Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law*, *AM. U. INT’L L. REV.* 379, 380 (2006). *Cf.* NATHAN BROWN & MARA REVKIN, *supra* note 29, at 793. *See, e.g.*, Emon, *supra* note 29, at 103 (arguing that “the key is to avoid structuring the ‘debate’ and perpetuates the false claim that Islamic doctrine is largely non-compliant with international human in a way that automatically reduces the value of international human rights law in Muslim states rights law.”).

¹⁵⁴ Al-Awadhi, *supra* note 19, at 569-70. *See, e.g.*, BASIC SYSTEM OF GOVERNANCE, art. 28 (Saudi Arabia) (according to which the State must guarantee job opportunities); *cf.* CONST. OF THE KINGDOM OF BAHRAIN, art. 16(a), which allows only Bahraini citizens to be employed in public administration.

¹⁵⁵ WORLD BANK REPORT 2019, *supra* note 18, at 52; INTERNATIONAL MONETARY FUND [IMF] MIDDLE E. DEP’T, *FINANCIAL SYSTEMS AND LABOR MARKETS IN THE GULF COOPERATION COUNCIL COUNTRIES* 34-35 (1997).

so-called policies of nationalization.¹⁵⁶ These policies' objective is primarily to maintain stability in the demographics of the population, as well as to reduce dependence on expatriate and (skilled) migrant workers. In practice, this is translated into employment quotas and higher monthly wages for GCC nationals even in the private sector,¹⁵⁷ and various State measures to increase the population—such as, for instance, lowering marriage costs and forming educational programs to reduce dowry in the case of Qatar.¹⁵⁸

The second consequence is the quasi-absolute dependence on migrant workers and the unequal growth of the population with migrants far outnumbering citizens in Qatar and the UAE, where only about one out of ten is a citizen.¹⁵⁹ This in turn creates numerous human rights issues associated with migration, ranging from violations of migrant workers' rights¹⁶⁰ to human trafficking.¹⁶¹ Migrant workers' rights in the GCC are specifically dependent on the rules of sponsorship.¹⁶² In

¹⁵⁶ “Kuwaitization;” “Omanization;” “Qatarization;” “Saudization;” “Bahrainization;” and “Emiratization” respectively.

¹⁵⁷ See, e.g., A.H. Barnett, Michael Malcolm & Hugo Toledo, *Shooting the Goose that Lays the Golden Egg: The Case of UAE Employment Policy*, 42 J. ECON. STUD. 285, 288 (2014).

¹⁵⁸ See PERMANENT POPULATION COMMITTEE, THE POPULATION POLICY OF THE STATE OF QATAR 2017-2022 7 (2017), https://www.mdps.gov.qa/en/statistics/Statistical%20Releases/Population/Population/2017/population_policy_2017_EN.pdf [hereinafter POPULATION POLICY OF THE STATE OF QATAR] (regarding Goal 1).

¹⁵⁹ Al-Awadhi, *supra* note 19, at 561; Nasra Shah, *Restrictive Labour Immigration Policies in the Oil-Rich Gulf: Effectiveness and Implications for Sending Asian Countries*, at 2, U.N. Doc. UN/POP/EGM/2006/03 (May 5, 2006). See NADEYA SAYED ALI MOHAMMED, POPULATION AND DEVELOPMENT OF THE ARAB GULF STATES: THE CASE OF SAUDI ARABIA, OMAN AND KUWAIT (2003) (for a study of these statistics prior to 1995).

¹⁶⁰ See, e.g., François Crépeau (Special Rapporteur on the Human Rights of Migrants), *Rep. on Mission to Qatar*, ¶ 6 at 23, U.N. Doc. A/HRC/26/35/Add.1 (April 2014); David Keane & Nathan McGeehan, *Enforcing Migrant Workers' Rights in the United Arab Emirates*, 15 INT'L J. MINORITY AND GROUP RTS. 81, INSERT PIN CITE (2008). See also Andrew Tock, *The Dark Side of the Dunes: The Plight of Migrant Labourers in the United Arab Emirates, Relative to International Standards Protecting the Rights of Migrant Workers*, 3 U.C. LONDON HUMAN RTS. REV. 109, 137 (2010).

¹⁶¹ Sigma Huda (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Rep. on Mission to Bahrain, Oman and Qatar*, at 2, U.N. Doc. A/HRC/4/23/Add.2 (Apr. 25, 2007) (arguing that “in the unequal balance of power [it] creates, this system increases the vulnerability of foreign migrant workers and therefore fosters the demand for trafficking.”).

¹⁶² Under the sponsorship system, the rights of migrant workers are to a large extent—if not exclusively—subject to a single employer, who typically needs to be either a national or a resident. This means that these migrant workers' entry

practice, sponsorship has allowed GCC states to systematically withhold passports¹⁶³ and refuse exit permits¹⁶⁴—arguably subjecting migrants to conditions resembling forced labor, or even slavery.¹⁶⁵

This twofold rationale has led GCC citizens themselves to a certain inertia at the level of (local) public engagement and public demands. Yet, these demands are precisely the catalyst for human rights claims. The latter are not born *ex nihilo*; there must necessarily be some kind of abuse or injustice that precedes them, and this abuse or injustice needs to take the form of a legal claim that is formulated publicly. As history has shown, human rights movements are born out of struggles to fight against injustice and repression, as well as to guarantee property rights.¹⁶⁶ Both injustice and repression, in turn, are related to lack of safety, including personal safety, financial safety, and demands for “more and better” social and economic rights (such as the right to food, the right to work, the right to housing, the right to health). In oil-driven monarchies, however, this discourse is substantially different. Civil rights are generally “split”¹⁶⁷ in rights for GCC citizens on the one hand, who enjoy extreme human and financial safety, and rights for non-citizens on the other hand.

These observations on the nature and quality of the human rights discourse in the Gulf has been made evident in the beginning of 2010. Gulf States remained largely outsiders to the awakening that swept the Arab world.¹⁶⁸ GCC citizens’ complaints about unemployment and

conditions, residency, employment conditions, and exit permits are strictly regulated, largely subjecting each move to the approval of the sponsor. *See* Alzahrani, *supra* note 18, at 382 (discussing the Islamic institution of *kafālah*, the Islamic alternative to adoption, from which sponsorship originates).

¹⁶³ CERD Comm., Consideration of U.A.E. Repts., *supra* note 126, ¶ 37 at 32-33.

¹⁶⁴ *See, e.g.*, Maria Grazia Giammarinaro (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Mission to Kuwait*, ¶ 5, UN Doc. A/HRC/35/37/Add.1 (Apr. 21, 2017); Keane & McGeehan, *supra* note 160, at 94 (criticizing the UAE labor law and discussing Human Rights Watch’s response. HUMAN RIGHTS WATCH, THE UAE’S DRAFT LABOR LAW: COMMENTS AND RECOMMENDATIONS (2007), hrw.org/backgrounders/mena/uae0307/); Tock, *supra* note 160, at 151. *See also* Sarath K. Ganji, *Leveraging the World Cup: Mega Sporting Events, Human Rights Risk, and Worker Welfare Reform in Qatar*, 4 J. MIGRATION & HUMAN SEC. 221, 230-36 (Aug. 8, 2018).

¹⁶⁵ Keane & McGeehan, *supra* note 160, at 108; Tock, *supra* note 160, at 115.

¹⁶⁶ This is also why the first rights to be guaranteed under the French declaration were the right to property, the right to safety, and the right to “resist oppression.” Declaration of the Rights of Man and of the Citizen, art. 2 (1789).

¹⁶⁷ Al-Awadhi, *supra* note 19, at 569-71.

¹⁶⁸ Zoltan Barany, *The “Arab Spring” in the Kingdoms*, ARAB CTR. RES. & POL’Y STUD.—RES. PAPER 1 (Sept. 1, 2012) (noting that “demonstrations in these countries

State corruption have nothing comparable to those formulated, say, in Cairo's Tahrir square. Bahrain is exceptional in that the uprising there was the result of the Shi'a minority's claim for enhanced rights already in place for the Sunni majority. In Bahrain protests culminated in a bloodshed, and an Inquiry Commission was subsequently established.¹⁶⁹ As shown in the final report of that Commission, protests were severely suppressed¹⁷⁰ with the assistance of a "joint military force" composed of units from the six member States of the GCC (the so called GCC-JSF).¹⁷¹ Yet, this is an exception to the otherwise "mild" revolutions in the Gulf. In Oman, for instance, the Sultan swiftly responded to his people's demands by increasing the powers of the *Shura* council,¹⁷² while in Qatar, not that astonishingly, "the gamut of state responses included tactical pre-emptive political concessions", which resulted in no demonstrations at all.¹⁷³

On the contrary, the ones who are genuinely affected by GCC states' lack of human rights commitments are the "outsiders"—those who are hardly represented sufficiently before governmental or policy-making bodies and seldom allowed to speak freely, let alone demonstrate. This category includes the aforementioned "non-citizens" (who are prevented from forming trade unions or otherwise represented before governmental or policy-making bodies)¹⁷⁴ and *Bi-doons* (who are found stateless in their own lands by virtue of

where generally small protesters demanded reform not revolution, governments reacted to events with a measure of flexibility, and their security forces typically avoided disproportionate retaliation."). *But see* MARK C THOMPSON & NEIL QUILLIAM, POLICY MAKING IN THE GCC: STATE, CITIZENS AND INSTITUTIONS (2017); *see also* U.S. D.O.S. Report 2018, *supra* note 33, at 11.

¹⁶⁹ Bassiouni Commission Report, *supra* note 20, at 1.

¹⁷⁰ *Id.* at 219 (on the deaths arising out of the events).

¹⁷¹ *Id.* at 157.

¹⁷² KHALID M. AL-AZRI, CONSTITUTIONALISM, HUMAN RIGHTS, AND ISLAM AFTER THE ARAB SPRING 173, 183 (Rainer Grote & Tilman J. Röder eds., 2016); SULTANY, *supra* note 19.

¹⁷³ Barany, *supra* note 168, at 1, 3 (citing Guido Steinberg, Comment 2012/C 07, *Qatar and the Arab Spring*, STIFTUNG WISSENSCHAFT UND POLITIK (Feb. 2012)), (noting that: "a few activists criticized the Emir's pro-West foreign policy, but the main domestic threat remained the longstanding in-fighting within the several thousand strong al-Thani ruling family.").

¹⁷⁴ Even when this right is asserted publicly, the existence of trade unions is ambivalent. *See, e.g.*, HRC, Oman Compilation, *supra* note 50, at ¶ 7 (one Special Rapporteur noting that "all workers, be they Omanis or expatriates, had the right to join trade unions"); *id.* at ¶ 36 (another Special Rapporteur noting that "there were no trade unions nor any regulation of the practice of striking in the government sector.").

restrictive nationality laws and subject to deportation at any any-time).¹⁷⁵ This category also includes, but is not limited to: political dissenters, members of religious minorities and atheists, LGBTQI individuals, and women who are victims of abuse or domestic violence. All the above groups lack visibility and are almost excluded by default from policy making, if not severely discriminated against. The same applies to the numerous women who are subject to male guardianship. Certainly, progress is visible, and today there is an increase in the number of women placed within legislative¹⁷⁶ and policy-making positions.¹⁷⁷ Yet, lack of empowerment is associated with patriarchal structures and is hardly in the process of being eradicated.

Such repetitive patterns pertaining in the Gulf are of course not “minor” human rights issues. They are rather evidence of a continuous and uncontested lack of political, cultural and social legitimacy of “universal human rights,” as well as a lack of commitment to core principles of human rights law, such as gender equality and the prohibition of discrimination. *A fortiori*, they are violations of values that undermine the entire human rights edifice.

III. RECONSTRUCTING HUMAN RIGHTS: THE VISIONS OF THE

¹⁷⁵ Al-Awadhi, *supra* note 19, at 572 (reporting that in Kuwait, when *bidoons* demonstrated, they were immediately threatened with deportation by the members of the ruling family).

¹⁷⁶ Habib Toumi, *Kuwait By-Elections: 42 Men, Five Women*, GULF NEWS (Mar. 11, 2019, 8:50 AM), <https://gulfnews.com/world/gulf/kuwait/kuwait-by-elections-42-men-five-women-1.1552280111063>; *Saudi Arabia's King Appoints Women to Shura Council*, BBC NEWS (Sept. 11, 2013), <https://www.bbc.com/news/world-middle-east-20986428>; *Qatari Shura Council Elected Chairperson of Women's Parliamentarians Forum*, THE PENINSULA (Apr. 7, 2019, 8:43 AM), <https://www.thepeninsulaqatar.com/article/07/04/2019/Rapporteur-of-Shura-Council-elected-Chairperson-of-Women%E2%80%99s-Parliamentarians-Forum>; *Omanis Vote in Shura Council Elections*, AL ARABY (Oct. 28, 2019), <https://www.alaraby.co.uk/english/news/2019/10/28/oman-votes-in-shura-council-elections> (noting that in the 2019 election in Oman, 40/737 candidates were women, and two were elected).

¹⁷⁷ See e.g., Saadia Mufarrehby, *Gulf Women Have Come a Long Way*, AL JAZEERA (Mar. 8, 2019), <https://www.aljazeera.com/indepth/opinion/gulf-women-long-190308131344342.html>; see also Hafsa Adil, *Meet the Qatari Women Making Waves in the Film Industry*, GULF NEWS (Mar. 4, 2017), <https://www.thepeninsulaqatar.com/opinion/03/07/2019/Qatar-affirms-making-legislative-reforms-for-protection-of-human-rights>.

GCC STATES

The appropriate question that arises, therefore, is not whether these States comply with current international human rights standards, as they obviously do not. Rather, the question is to which extent GCC local policies—in this case the GCC “Visions”—may contribute to accepting universal human rights standards as part of these States’ realities. In fact, it does appear that Gulf States are gradually realizing the importance of human rights inclusion in their strategies and in view of implementing their Visions. Affirmations of commitment to some “values” or “civil liberties” in the Visions are generally limited and lukewarm.¹⁷⁸ Yet, GCC Visions are not insulated documents. A variety of strategies of implementation and reforms have been set up for the promotion and realization of the objectives set therein.¹⁷⁹ And these strategies, as this article argues, cannot but include at least *some* human rights in a variety of forms. This occurs regardless of their exact formulation—as values, rights, liberties, or commitments. In this sense, the hypothesis of the human rights trend in the region is accurate.

A. Economic Diversification and the GCC Visions

GCC Visions were launched at different times, with the first as early as 1976, in the form of a “a series of five-year plans” by Sultan Qaboos bin Said of Oman, subsequently adopted as formal State policy in 1995.¹⁸⁰ The primary drive of the Visions is economy diversification, namely, reducing dependency on the oil and gas sector and achieving sustainable economic growth.¹⁸¹ In addition to this, there is

¹⁷⁸ For instance, the Kuwaiti Vision does not explicitly mention human rights; it does however include “tackl[ing] the stateless *bidoon* problem” under the principle of “Humane Society and Good Governance.” GENERAL SECRETARIAT OF THE SUPREME COUNCIL FOR PLANNING AND DEVELOPMENT OF KUWAIT, *supra* note 10, at 5. Also, the Bahraini Vision 2030 mentions human rights under the chapter regarding “equality before the law” (“Fairness in society means that all are treated equally under the law, in accordance to international human rights.”). BAHRAIN ECONOMIC VISION 2030, *supra* note 9, at 11.

¹⁷⁹ See Martin Hvidt, *Economic Diversification in GCC Countries: Past Record and Future Trends*, in KUWAIT PROGRAMME ON DEVELOPMENT, GOVERNANCE AND GLOBALISATION IN THE GULF STATES 12-13 (2013).

¹⁸⁰ *Id.* at 23.

¹⁸¹ WORLD BANK REPORT 2019, *supra* note 18, at 29 (“Economic diversification lies at the core of efforts by the GCC countries to achieve sustainable and equitable growth . . . will have a larger impact on growth and employment if supported by a

the need to develop human capital, and therefore end excessive reliance on foreign workers and expatriates. These two characteristics are found in all six Visions, in the enunciation of objectives,¹⁸² “national priorities,”¹⁸³ or eventually their “preamble.”¹⁸⁴

Visions naturally emphasize different sectors—for instance, the Emirati Vision emphasizes foreign investment and development, and the Saudi and Qatari Visions emphasize infrastructure, education, culture, and sports (with Qatar’s award of the World Cup 2022 in December 2010 being the obvious game changer in the region). Conversely, the Bahraini and Omani Visions emphasize services, IT, and tourism. Yet, the strategies that are put in place in Gulf States in order to implement the Visions are not far from each other. Illustrations of the variety of implementing measures include: the opening of investment in public services to the private sector, even though the public offering of shares of monopolistic state companies, most notably of Saudi Aramco;¹⁸⁵ the proliferation of film, music, and art festivals, such as the annual “Bahrain International Music Festival,” and its offspring, the Bahraini Jazz festival;¹⁸⁶ and the funding of “sustainable”

greater openness of the economy to foreign direct investment (FDI) and to international trade.”); *see also* Hvidt, *supra* note 179, at 4.

¹⁸² For instance, the “overarching objectives” of the Saudi Arabia 2030 Vision are to grow and diversify the economy; increase employment; offer a fulfilling and healthy life; enhance government effectiveness; enable social responsibility; and strengthen the Islamic and National identity. SAUDI ARABIA 2030 VISION, *supra* note 9, at 4-5.

¹⁸³ *See e.g.*, OMAN VISION 2040, *supra* note 11, at 3-6 (“Strategic direction: inclusive education, life-long learning, and scientific research that lead to a knowledge society and competitive national talents A diversified, sustainable and competitive economy that is based on knowledge and innovation . . .”).

¹⁸⁴ *See e.g.*, QATAR NATIONAL VISION 2030, *supra* note 9, at 13 (“Future economic success will increasingly depend on the ability of the Qatari people to deal with a new international order that is knowledge-based and extremely competitive.”); OMAN VISION 2040, *supra* note 11, at 5 (“will be thoroughly developed and precisely formulated . . . so that the vision is fully integrated into the economic and social realities and objectively orientated towards the future foresight, as a key guide and reference for planning in the next two decades.”).

¹⁸⁵ *See* Ted Kemp, *Saudi Aramco Will Offer Less Than 1% of Shares to Individual Investors in IPO*, CNBC NEWS (Nov. 9, 2019), <https://www.cnbc.com/2019/11/09/saudi-aramco-ipo-prospectus-released.html>. Saudi Aramco’s website provides restricted access to its initial public offering (IPO) documents.

¹⁸⁶ *See Bahrain Jazz Fest Promotes Popular Music with a Regional Twist*, EURONEWS (Nov. 2, 2018), <https://www.euronews.com/2018/11/02/bahrain-jazz-fest-promotes-popular-music-with-a-regional-twist>.

and “culturally appropriate tourism” as in Oman,¹⁸⁷ including funding schemes for farmers and women entrepreneurs.¹⁸⁸

Two strategies that are key for the local enhancement of civil liberties and human rights are identifiable across the region: (i) creating stable and reliable markets in order to attract foreign investment, and (ii) developing knowledge for the purpose of building sustainable, knowledge-based economies—including by attracting foreign human capital (human capital investment).¹⁸⁹ However, stability and investment are not necessarily related to human rights. For instance, the scandal surrounding Cambridge Analytica and the harvesting of personal data resulted in the “the crash of Facebook shares,” leading commentators to suggest that human rights should be now form part of investment practices. Yet, the Khashoggi extrajudicial killing and the atrocities with respect to the treatment of human rights defenders in Saudi Arabia have not deterred investors from “piling billions of dollars in Saudi markets.”¹⁹⁰ Contrary to investment, however, the growth of human capital cannot be achieved without at least some commitment to human rights ideals and a subsequent undertaking of human rights obligations. This applies when knowledge is increased locally by way of changing the “lifestyle” of Gulf citizens.¹⁹¹ It is also done

¹⁸⁷ WORLD BANK REPORT 2019, *supra* note 18, at 17-21. On the challenges, *see generally* INTERNATIONAL TOURISM DEVELOPMENT AND THE GCC STATES (Marcus Stephenson & Ala Al-Hamarnah, eds., 2017).

¹⁸⁸ STANDING COMM. ON ECON & COM. COOPERATION OF THE ORG. OF ISLAMIC COOPERATION [COMCEC], SUSTAINABLE DESTINATION MANAGEMENT STRATEGIES IN THE OIC MEMBER COUNTRIES 59 (Feb. 2019) (in the view of “position[ing] Oman as a top- of-mind destination for vacations, discovery, and meetings, attracting 11 million international and local tourists annually by 2040.”). *See e.g.*, the Omani Tourism Development Company’s (“OMRAN”) *Zaree* Programme, an “income generating all-female micro-tourism business located in Khasab.” *Zaree*, OMRAN, <https://omran.om/responsibility/corporate-social-responsibility/zaree/> (last visited Dec. 11 2019).

¹⁸⁹ WORLD BANK REPORT 2019, *supra* note 18, at 17, 37 (according to the World Bank, “human capital consists of the knowledge, skills, and health that people accumulate over their lives to make them more productive.”).

¹⁹⁰ Simon Constable, *No Shame? Investors Pile Billions Into Saudi Stocks Months After Alleged Murder Of Jamal Khashoggi*, FORBES (June 26, 2019, 10:41 AM), <https://www.forbes.com/sites/simonconstable/2019/06/26/no-shame-investors-pile-billions-into-saudi-stocks-months-after-alleged-murder-of-jamal-khashoggi/#4e85cca363bc>.

¹⁹¹ *See e.g.*, SAUDI ARABIA 2030 VISION, *supra* note 9, at 50 (on the “Lifestyle Improvement Program”); BAHRAIN ECONOMIC VISION 2030, *supra* note 9, at 21 (“Promoting and encouraging a healthy lifestyle.”). *Cf.* THE ABU DHABI ECONOMIC VISION 2030, GOV’T OF ABU DHABI 41 (Nov. 2008), <https://www.actvet.gov.ae/en/Media/Lists/ELibraryLD/economic-vision-2030-full->

by increasing the quality of education,¹⁹² as well as by attracting foreign skilled workers.¹⁹³ From then on, human rights ideals are no longer Western values that cannot be applied in the Gulf. Instead, they are prerequisites of good governance, economic growth, cultural development, tourism, and, ultimately, modernization.

B. Human Rights as an Undisputed Necessity in the Gulf

All Gulf States have set up elaborate strategies to enhance their Visions. Qatar, as this paper argues, has gone one step further, reacting promptly to human rights criticisms and international pressure. At the same time, in the neighboring Kingdom of Saudi Arabia, policy reforms have been even more rapid, yet not accompanied by analogous legal commitments. This section examines both these case-studies in order to suggest that the Qatari example could be followed by other Gulf States, including Saudi Arabia.

1. The Case of Qatar: Paving the Way to the 2022 FIFA World Cup

Qatar is the only Gulf State that over the recent years has been increasingly affirming its commitment to human rights—at both local and international level—including the Emir's speech before the U.N. General Assembly.¹⁹⁴ In addition, human rights in Qatar are

versionEn.pdf (Objective 6 states: “lifestyle and best-in-class education, healthcare, cultural and leisure services will be provided and actively promoted.”).

¹⁹² See, e.g., QATAR NATIONAL VISION 2030, *supra* note 9, at 15-16 (“Qatar aims to build a modern world-class educational system . . . and build an educated population”); POPULATION POLICY OF THE STATE OF QATAR, *supra* note 158, at 9 (Goal 2 planning to “[u]rge educational institutions to grant scholarships to Qataris for specialties associated with the knowledge economy.”). Cf. also BAHRAIN ECONOMIC VISION 2030, *supra* note 9, at 22 (Bahrain’s educational strategy is to “[e]ncourage research and development in universities to create the platform for a knowledge-based economy.”); Emirati vision: 3.1 “harness the full potential of national “fuel knowledge-based economy”; ABU DHABI ECONOMIC VISION 2030, *supra* 191, at 5 (the Second of the nine pillars for the Emirate’s social, political, and economic future is: “a sustainable knowledge-based economy.”).

¹⁹³ See e.g., GENERAL SECRETARIAT OF THE SUPREME COUNCIL FOR PLANNING AND DEVELOPMENT OF KUWAIT, *supra* note 10, Objective 4 at 4 (“importing expatriate labor force.”). Cf. POPULATION POLICY OF THE STATE OF QATAR, *supra* note 158, Goal 2 at 9 (“Support knowledge economy policy: 1. Focus on recruiting and retaining experienced and specialists professionals expatriates in the knowledge economy, and reducing reliance on temporary consultants.”).

¹⁹⁴ See His Excellency Emir Sheikh Tamim bin Hamad al-Thani, Address to the U.N. General Assembly, 71st Session (Sept. 20, 2016), transcript available at

increasingly perceived as a tool to restore relations of “good neighborliness,” as will be discussed below, especially in the context of the GCC crisis since 2017.

i. The Qatari Vision 2030 and Human Rights Reforms

Qatar’s Vision 2030 was drafted in 2008 and precedes the award of the World Cup. It “rests” on four main pillars, which denote four different types of development: (i) human development, defined as “development of all its people to enable them to sustain a prosperous society;” (ii) social development, defined as the “development of a just and caring society based on high moral standards, and capable of playing a significant role in the global partnership for development;” (iii) economic development (defined as “development of a competitive and diversified economy capable of meeting the needs of, and securing a high standard of living for, all its people for the present and for the future;” and (iv) environmental development (defined as the “management of the environment such that there is harmony between economic growth, social development and environmental protection.”).

The Qatari vision does not explicitly embrace human rights. In fact, although it does refer to “personal freedoms,” it provides that said freedoms are consistent with “moral and religious values and traditions.”¹⁹⁵ The spirit of the Qatari vision, however, embraces some equivalent values and principles in the area of social, economic, and cultural human rights. It is arguably for the same reason that Qatar has also managed to substantially improve its overall “human development index” (which peaked at 0.856 in 2016).¹⁹⁶

<https://washington.embassy.qa/en/news/detail/2016/10/11/hh-the-emir-s-address-to-the-un-general-assembly> (stating that “the State of Qatar has been keen on implementing its obligations at both national and international levels to defend the collective and individual rights and promote human rights in the world.”). *Cf.* the speech of the Permanent Representative of the State of Qatar to the United Nations, Ambassador H E Sheikha Alya Ahmed bin Saif Al Thani, 74th session: affirmations that Qatar will continue promoting human rights. <https://mofa.gov.qa/en/all-mofa-news/details/1441/09/24/ambassador-sheikha-alya-bint-ahmed-bin-saif-al-thani-qatar-is-active-player-at-the-un>

¹⁹⁵ See QATAR NATIONAL VISION 2030, *supra* note 9, at 10 (exemplified in the statement “the National Vision builds on a society that promotes justice, benevolence and equality. The Vision embodies the principles of the Permanent Constitution which: protects public and personal freedoms; promotes moral and religious values and traditions; and, guarantees security, stability and equal opportunities.”).

¹⁹⁶ See U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2016 198 (2016), <http://hdr.undp.org/sites/default/files/hdr2019.pdf> (demonstrating the most recent

More importantly, however, Qatar has proceeded to various reforms in preparation of the 2022 World Cup. The award itself has been described as a “agent of change on behalf of worker welfare reform,” and a “seminal moment” for Qatar.¹⁹⁷ Even in anticipation of that momentum, the Qatari authorities undertook various initiatives that would improve the State’s human rights image. First, it extended a standing invitation to U.N. Special Procedures, becoming the first and only Gulf state to have done so to date.¹⁹⁸ Second, it amended the framework for the National Human Rights Committee, reforming its powers and allowing reports to be issued in English.¹⁹⁹ Third, the Qatari government took steps towards demonstrating international solidarity. For example, the Qatari “Supreme Committee for Delivery and Legacy’s Generation Amazing Program,” which is the body mandated to deliver the Games (“Supreme Committee”), had already initiated “football development programmes in Lebanon, Nepal, Pakistan, Syria and Qatar” in 2009,²⁰⁰ in a spirit similar to that of “FIFA Forward Football Development Programme.” Still today, the Supreme Committee continues to fund programs for participation of “women and girls in football,”²⁰¹ as well as to “foster sustainable social development in disadvantaged communities in the Middle East, Africa and Asia.”²⁰² Such initiatives include even the prospective dismantling and

statistics which show the Gulf states scoring substantially higher than the average index for the Arab region).

¹⁹⁷ See Ganji, *supra* note 164 at 222.

¹⁹⁸ See *Standing Invitations*, U.N. OFF. HIGH COMM’R HUMAN RTS., <https://spinternet.ohchr.org/StandingInvitations.aspx> (last visited Dec. 11, 2019) (demonstrating Qatar’s standing invitation on June 1, 2010).

¹⁹⁹ See *Marsūm bi-Qānūn Raqam (17) li-Sinnah 2010 bi-Tanzīm al-Lajinah al-Waṭaniyah li-Ḥuqūq al-Insān* (Decree Law No. (17) of 2010 on the Organization of the National Human Rights Committee) (Qatar) (English version available at <https://nhrc-qa.org/en/decreed-law-no-17-of-2010-on-the-organization-of-the-national-human-rights-committee-nhrc/>) (Arabic version available at <https://nhrc-qa.org/مرسوم-بقانون-رقم-17-بتنظيم-اللجنة-الوطن>); see National Human Rights Committee, *Annual Reports*, <https://nhrc-qa.org/en/annual-reports/#2010>, (last accessed Dec. 11, 2019) (Qatar) (showing the 2010 report as the first report available in both English and Arabic).

²⁰⁰ See *First Step on the Road to 2022: 16 March 2009*, SUPREME COMM. DELIVERY & LEGACY, <https://www.qatar2022.qa/en/historic-journey> (last visited Dec. 11, 2019) (Qatar) [hereinafter QATAR SUPREME COMM.].

²⁰¹ SUPREME COMMITTEE FOR DELIVERY AND LEGACY, LEGACY BOOK 14 (1st ed. Apr. 2016), <https://www.qatar2022.qa/sites/default/files/docs/SC-Legacy-Book-EN.pdf> (Qatar).

²⁰² SUPREME COMMITTEE FOR DELIVERY AND LEGACY, LEGACY BOOK 14 (1st ed. Apr. 2016).

donation of part of the World Cup's material infrastructure to "smaller sports and cultural venues" in Africa and Asia.²⁰³

ii. *Criticism Prior the Award of the World Cup 2022*

Even so, the award was not met without opposition. The criticism against Qatar's lack of human rights concerns focused on the system of sponsorship and the treatment of the migrant workforce in construction sites, including health issues due to the extreme hot weather conditions from May to September. Allegations of workers' deaths were spread in the news, especially from 2011 to 2014.²⁰⁴ Moreover, the annual 2013 Amnesty International report was highly critical of human rights violations against workers and "dissidents," referring (among other things) to "new cases of torture and ill-treatment," the "imposition of at least one death sentence," "strict controls on freedom of expression, including the arrest and imprisonment of a poet incommunicado," and the abuse of workers who were "made to work excessive hours beyond the legal maximum or were paid far less than agreed when they were contracted."²⁰⁵ The same findings were reproduced in another report three years later (2017), this time by an international law firm which was commissioned to examine compliance with certain ILO rules. This report found that Qatar should investigate the causes of these suspicious deaths.²⁰⁶ In the fall of 2017, Human Rights Watch ("HRW") also published a report on the working and living conditions of the migrant labor force, challenging the Qatari framework and calling for more protections for workers against extreme weather

²⁰³ Joseph Varghese, *Qatar to Donate 170,000 Seats After FIFA 2022*, GULF TIMES (Sept. 8, 2018), <https://www.gulf-times.com/story/605334/Qatar-to-donate-170-000-seats-after-FIFA-2022>; *see also id.*

²⁰⁴ Pete Pattison, *Sudden Deaths of Hundreds of Migrant Workers in Qatar Not Investigated*, THE GUARDIAN (Oct. 7, 2019), <https://www.theguardian.com/global-development/2019/oct/07/sudden-deaths-of-hundreds-of-migrant-workers-in-qatar-not-investigated> (reporting that at least 1,025 Nepalis died in Qatar between 2012 and 2017, 676 of them from causes deemed to be natural). *See also*, Zach Schreiber, *The Right to Play: How Sports Leagues Worldwide Interfere with the Fundamental Right to Work*, 25 SPORTS L. J. 19, 41 (2018).

²⁰⁵ AMNESTY INTERNATIONAL ANNUAL REPORT 2013, THE STATE OF THE WORLD'S HUMAN RIGHTS, AMNESTY INTERNATIONAL 215 (May 23, 2013), <https://www.amnesty.org/en/documents/pol10/001/2013/en/>.

²⁰⁶ DLA PIPER, MIGRANT LABOUR IN THE CONSTRUCTION SECTOR IN THE STATE OF QATAR 90 (April 2017).

conditions.²⁰⁷ To date, the Guardian continues to report that “hundreds of labourers in the World Cup host nation die each year, with the majority of the fatalities attributed to heart attacks or ‘natural causes’ by the Qatari authorities.”²⁰⁸ These same attacks led to fatalities both in construction sites (as in the case of a British engineer in 2017)²⁰⁹ and labor camps (as in the case of a twenty-four year old Indian worker in 2019).²¹⁰

The extensive news reporting criticisms about labor rights violations was followed by increasing pressure by international organizations and the E.U. The International Labour Organization (“ILO”) and the International Trade Union Confederation (“ITUC”) intensified their scrutiny—the former, by setting up a tripartite committee to review the evidence and make recommendations to the Government of Qatar on how to comply with its international commitments,²¹¹ while the latter lodged a complaint with the Ministry of Labour in Qatar against Qatari construction companies.²¹² The E.U. called on Qatar to implement its laws in light of the ILO Conventions and “work closely with the relevant authorities in migrant workers’ countries of

²⁰⁷ *Qatar: Take Urgent Action to Protect Construction Workers*, HUMAN RIGHTS WATCH (Sept. 27, 2017), <https://www.hrw.org/news/2017/09/27/qatar-take-urgent-action-protect-construction-workers> [hereinafter HRW, *Qatar: Take Urgent Action to Protect Construction Workers*].

²⁰⁸ Pattison, *supra* note 204.

²⁰⁹ Patrick Wintour, *Qatar Stadium Where UK Worker Died was ‘Downright Dangerous’*, THE GUARDIAN (Feb. 27, 2018), <https://www.theguardian.com/world/2018/feb/27/qatar-stadium-uk-worker-zac-cox-died-downright-dangerous-world-cup>; *Zac Cox Death: Inquiry Into Qatar 2022 World Cup Stadium Fall*, BBC NEWS (July 28, 2019), <https://www.bbc.com/news/uk-england-sussex-49039356>.

²¹⁰ Pete Pattinson, *Dead at 24: Did Heat Kill Doha World Cup Worker Rupchandra Rumba?*, THE GUARDIAN (Oct. 2, 2019), <https://www.theguardian.com/global-development/2019/oct/02/dead-at-24-heat-doha-world-cup-worker-rupchandra-rumba>.

²¹¹ *See generally* ILO, *Complaint Concerning Non-Observance by Qatar of the Forced Labour Convention, and the Labor Inspection Convention, Made by Delegates to the 103d Session (2014) of the Int’l Labour Conference under art. 26 of the ILO Const.*, U.N. Doc. GB.326/INS/8(Rev.) (Mar. 17, 2016). *See also* ILO, *Complaint Concerning Non-Observance by Qatar of the Forced Labour Convention, and the Labour Inspection Convention, made by Delegates to the 103d Session (2014) of the ILO under art. 26 of the ILO Const.*, U.N. Doc. GB.329/INS/14(Rev.) (Mar. 13, 2017).

²¹² *Qatar Response to Labour Rights Violations Weak and Disappointing*, INT’L TRADE UNION CONFEDERATION [ITUC] (Jan. 10, 2013), <https://www.ituc-csi.org/qatar-response-to-labour-rights>.

origin.”²¹³ FIFA itself also took action. In 2016, it requested Professor John Ruggie to draft a report with recommendations on the application of the U.N. Guiding Principles for Business and Human Rights (“UNGPs”) in the Mega-Sport Events (“MSEs”) setting.²¹⁴ As a result, FIFA adopted a human rights policy “. . . specify[ing] FIFA’s statutory human rights commitment and outlining FIFA’s approach to its implementation by the UN Guiding Principles on Business and Human Rights,”²¹⁵ while in December 2017, the ILO Steering Committee of the Mega-Sporting Events Platform for Human Rights committed to establishing a “Centre for Sport & Human Rights” with a focus on MSEs.²¹⁶

iii. *Qatar’s Response*

Consequently, Qatar had no choice but to apply more scrutiny and undertake deep various “human rights reforms” to fully comply with international standards. These reforms can be split into three categories.

First are domestic legal reforms specifically to workers’ welfare. In this respect, Qatar’s position has been commendable, as it has been doing the maximum to increase compliance with current human rights standards. Duties have also been delegated to non-State entities, which have set up additional policy standards and practices of self-regulation. These include those set up by the Supreme Committee, and also by Qatar Foundation, which is formally a non-governmental entity. The Supreme Committee’s *Workers’ Welfare Standards*, in particular, are important in terms of labor rights and set an important precedent for Mega-Sports Events (“MSEs”) in the developing world, as they oblige non-governmental entities to be transparent and engage in self-regulation practices—such as reporting, monitoring, auditing, and

²¹³ Resolution on Qatar: Situation of Migrant Workers, EUR. PARL. DOC. (2952(RSP)) (2013).

²¹⁴ *Report by Harvard Expert Professor Ruggie to Support Development of FIFA’s Human Rights Policies*, FIFA (Apr. 13, 2016), <https://www.fifa.com/who-we-are/news/report-by-harvard-expert-professor-ruggie-to-support-development-of-fi-2781111>.

²¹⁵ FIFA, *FIFA’S HUMAN RIGHTS POLICY 4* (May 2017), <https://www.fifa.com/governance/news/y=2017/m=6/news=fifa-publishes-land-mark-human-rights-policy-2893311.html>.

²¹⁶ *ILO Welcomes Commitment to Establishing Centre for Sport & Human Rights*, ILO (Nov. 30, 2017), https://www.ilo.org/global/about-the-ilo/news-room/news/WCMS_606707/lang-en/index.htm.

inspecting.²¹⁷ For instance, in the context of strategies for workers' welfare, the Supreme Committee has set up several programs to increase third party accountability, such as "recruitment fee reimbursement schemes."²¹⁸ At the same time, it has been investing in "cooling technology" (i.e., cooling vests for workers) and "electronic records management" (i.e., applications that gather medical data while working) to protect workers from heat and keep them, to the extent possible, healthy.²¹⁹

Second are reforms about labor rights generally, including through passage of relevant legislation. In fact, Qatar has managed to improve the conditions of sponsorship drastically. In the context of international pressure and a new report published by Amnesty International in 2019,²²⁰ it has now been announced that the full abolition of the *kafāla* will become a reality in early 2020.²²¹ This sets up an important precedent for the region since, from 2020 onwards, workers will no longer need the permission of their employer to seek and take up new employment.

Third are broader reforms about the empowerment of vulnerable persons and groups, primarily in relation to access to sports, culture, and education. In this respect, Qatar has taken several initiatives in favor of persons with disabilities and their access to sports and

²¹⁷ QATAR SUPREME COMM., *supra* note 200, at 15 (reporting that "in early 2014, 84 audits have been conducted, including 38 inspections of companies bidding for our projects, 10 service supplier inspections and 36 inspections of contractors and subcontractors."); *see also* FOURTH ANNUAL WORKERS' WELFARE PROGRESS REPORT, SUPREME COMM. DELIVERY & LEGACY (Feb 2018 – January 2019).

²¹⁸ QATAR SUPREME COMM., *supra* note 200, at 15.

²¹⁹ *Id.* at 15, noting that "in June, 3,500 cooling vests were deployed to selected trades that are exposed to higher temperatures in their work; with training on how to use these products for optimal cooling. The feedback was overwhelmingly positive and an 8°C reduction in skin temperature was recorded in on-site tests."

²²⁰ AMNESTY INTERNATIONAL, REALITY CHECK: THE STATE OF MIGRANT WORKERS' RIGHTS WITH FOUR YEARS TO GO UNTIL THE QATAR 2022 WORLD CUP (Sept. 19, 2019), <https://www.amnesty.org/en/latest/news/2019/09/qatar-despite-reform-promises-migrant-workers-still-return-home-without-wages-or-justice/>.

²²¹ *Qatar Dismantles Kafala System of Modern Slavery*, ITUC (Oct. 16, 2019), <https://www.ituc-csi.org/qatar-dismantles-kafala>. *See New Labour Laws in Qatar Benefiting Migrant Workers a 'Momentous Step Forward': ILO*, UN NEWS (Oct. 17, 2019), <https://news.un.org/en/story/2019/10/1049471>; *see also*, Faras Ghani, *Qatar Moves to Announce Abolishment of Kafala System*, AL JAZEERA (Oct 17, 2019), <https://www.aljazeera.com/news/2019/10/qatar-moves-announce-abolishment-kafala-system-191017070750729.html>.

culture,²²² which, regardless of the rationale, mark the beginning of a culture of inclusion.

Another illustration is LGBTQI rights, which is a taboo subject throughout the Gulf. Homosexual practices are still punished in Qatar by imprisonment from seven to fifteen years.²²³ This debate, however, appears to be advancing in light of the FIFA 2022 World Cup—and presumably also in light of FIFA’s support for diversity, inclusion, and gay rights.²²⁴ Since 2016, the year that the International Gay and Lesbian Football Association (“IGLFA”) was a finalist for FIFA’s diversity award, the discourse on LGBTQI rights has significantly grown in Qatar.²²⁵ There is much to be expected as pro-LGBTQI media outlets have been increasingly reporting that “Qatari authorities have assured that their LGBT[QI] supporters will be welcome” at the World Cup.²²⁶

²²² The Qatari 2030 Vision also mentions that “an effective social protection system for all Qataris that ensures their civil rights, values their contribution in developing their society, and ensures an adequate income to maintain a healthy and dignified life.” QATAR NATIONAL VISION 2030, *supra* note 9, at 22.

²²³ Qānūn Raqam 11 li-Sinnah 2004: Bi-Iṣḍār Qānūn al-‘Aqūbāt, al-Aḥkām al-Tamhīdy [Law no. 11 of 2004: Issuing the Penal Code, Introductory Provisions], art. 285 (Qatar) states that “whoever copulates with a male over sixteen years of age without compulsion, duress or ruse shall be punished with imprisonment for a term up to seven years. The same penalty shall apply to the male for his consent. The penalty shall be life imprisonment or a prison term not exceeding fifteen years if the offender is one of those previously mentioned in the second Paragraph of Article 279 of the present Law [article 279 : “. . . if the perpetrator from the ascendants of the victim, or the guardian, or those undertaking the brining up or looking after the victim, or is a person having authority thereupon, or the servant thereof or the servant of the aforesaid].” See also *id.* at art. 296 penalizing “leading, instigating or seducing a male anyhow for sodomy or immorality” through its penal code through the imposition of imprisonment of a “maximum of three years.”

²²⁴ See generally FIFA, GOOD PRACTICE GUIDE ON DIVERSITY AND ANTI-DISCRIMINATION 29, 60 (2016), <https://img.fifa.com/image/upload/wg4ub76pez-wcnxsaoj98.pdf>. See also *Slum Soccer Claims Inaugural FIFA Diversity Award*, FIFA (Sept. 26, 2016), <https://www.fifa.com/news/slum-soccer-claim-inaugural-fifa-diversity-award-2836958>.

²²⁵ ILGA, STATE-SPONSORED HOMOPHOBIA 2019 465 (March 2019), <https://ilga.org> (follow “Resources” category from menu; then follow “State-Sponsored Homophobia Report”; then follow hyperlink for English version of the document).

²²⁶ *Football: Liverpool Assured That LGBT Fans are Welcome in Qatar*, STRAITS TIMES (Nov. 4, 2019, 9:12 PM), <https://www.straitstimes.com/sport/football-liverpool-assured-that-lgbt-fans-are-welcome-in-qatar-says-ceo-ahead-of-club-world>; Patrick Kelleher, *Gay Fans are Welcome at Qatar World Cup – Just as Long as They Don’t Have Sex*, PINK NEWS (Sept. 27, 2019),

iv. *Human Rights and Good Neighbourliness*

From 2017 onwards, Qatar has an additional reason to intensify its process for “human rights compliance.” This reason is that the period of preparation for the Games coincided with a deep political crisis in the Gulf region, which insulated Qatar from its neighbors, especially Saudi Arabia, the UAE, and Bahrain. The crisis was marked by a severe blockade, tarnishing the long cherished “fraternal ties” that existed between the peoples of these brother states,²²⁷ and Qataris, arguably for the first time, found themselves victims of discrimination.

Thereby, Qatar was left with no option but to embrace all human rights mechanisms available to it. In fact, in March 2018, Qatar initiated a lawsuit against both Saudi Arabia and the UAE before the CERD Committee.²²⁸ This was done as a point in and of itself, but chiefly in order to be able to submit an application later to the ICJ. It is arguably in this context that, in May 2018, Qatar also ratified the two core human rights treaties: the ICCPR and the ICESCR.²²⁹ Following these moves, Qatar was also able to increase its chances before the ICJ and request provisional measures—submitted less than a month later.²³⁰

The successful decision of the CERD Committee on the interstate complaint against the UAE,²³¹ the admissibility of the complaint

<https://www.pinknews.co.uk/2019/09/27/qatar-world-cup-2022-fifa-anti-gay-sex-homosexuality/>.

²²⁷ See e.g., *UAE Ministry of Foreign Affairs Statement on Qatar Ties*, NATIONAL (June 5, 2017), <https://www.thenational.ae/world/uae-ministry-of-foreign-affairs-statement-on-qatar-ties-1.637077>.

²²⁸ As per CERD art. 11 & 22. Yet the use of these inter-state communications has been extremely rare. See David Keane, *ICERD and Palestine's Inter-State Complaint*, EJIL: TALK (Apr. 30, 2018), <https://www.ejiltalk.org/icerd-and-palestines-inter-state-complaint/>.

²²⁹ *Qatar Ratification Status*, UN OHCHR: TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=140&Lang=EN.

²³⁰ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Application Instituting Proceedings, ¶¶ 3, 5, 6, 22 (June 11, 2018). More specifically, Qatar complained before the ICJ that Qataris residing in the UAE “have been subjected to human rights abuses since June 2017,” including discrimination in various areas (employment, education, health) and dissemination of hate speech. According to Qatar’s submission to the ICJ, this treatment was “based expressly on their national origin” and “without any justification under international law.” *Id.* at ¶¶ 3, 5, 6.

²³¹ CERD Comm., Jurisdiction of the Inter-State Communication Submitted by Qatar against the UAE, U.N. Doc. CERD/C/99/3 (Aug. 30, 2019). See also David Keane, *CERD Reaches Historic Decisions in Inter-State Communications*, EJIL:

against Saudi Arabia,²³² as well as the granting of provisional measures in Qatar's favor,²³³ have all marked a new era of confidence for human rights bodies in Qatar. And indeed, a number of entities have been expressing their confidence in human rights mechanisms, including the National Human Rights Committee,²³⁴ and his Highness, the Emir himself.²³⁵ Furthermore, Qatar has in all evidence realized that confidence in human rights mechanisms might help the State vis-à-vis the blockade. In this way, human rights compliance is achieved, albeit not as an objective *per se*, but rather in order to maintain relations of good neighborliness and its position in the global arena.

2. The Case of Saudi Arabia: Paving the Way to the 2020 "Red Sea Film Festival"

The changes in policy since the launching of the Vision in 2016 (and the ruling of the country by the Crown Prince, who came to power when he was still under 35 years of age) have been spectacular, especially in the sectors of culture and entertainment. The Kingdom might be also gradually realizing that its "Vision 2030" cannot be realized without—at least some—human rights compliance. Political moves aside (such as the Saudi membership at the U.N. Human Rights Council since 2015),²³⁶ there are indeed some slow steps of reform towards human rights compliance in that State.

A wind of change has been blowing in the Kingdom since 2010 and indeed some isolated signs of progress are already visible since then. Such progress includes *Wadjda*, the Saudi candidature for

TALK! (Sept. 6, 2019), <https://www.ejiltalk.org/cerd-reaches-historic-decisions-in-inter-state-communications/>.

²³² CERD Comm., Admissibility of the Inter-State Communication Submitted by Qatar Against the Kingdom of Saudi Arabia, U.N. Doc. CERD/C/99/6 (Aug. 30, 2019).

²³³ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Order, 2019 I.C.J. Rep. 358 (May 2).

²³⁴ National Human Rights Comm., Statement No. (07/2019) On the decision of the Committee on the Elimination of Racial Discrimination (CERD) (Aug. 29, 2019).

²³⁵ See *Only International Actions Can Settle the World's 'Enormous and Diverse Cross-Border Challenges', Qatar Tells UN Assembly*, U.N. NEWS (Sept. 24, 2019) <https://news.un.org/en/story/2019/09/1047282>.

²³⁶ On reactions of different countries regarding Saudi membership, see, e.g., Tom Brooks-Pollock, *Anger After Saudi Arabia 'Chosen to Head Key UN Human Rights Panel'*, INDEPENDENT (Sept. 20, 2015, 11:56 AM), <https://www.independent.co.uk/news/world/anger-after-saudi-arabia-chosen-to-head-key-un-human-rights-panel-10509716.html>.

Cannes in 2012, a full-length film shot entirely inside the Kingdom and directed by a Saudi woman.²³⁷ Additionally, there has been a slight increase in the number of women in the Saudi parliament and some consultative posts.²³⁸ Yet, these reforms were only the beginning. Shortly after the launch of the Vision in 2016, the Kingdom passed a royal decree curtailing the powers of the Shari'a police.²³⁹ A year later, in 2017, in the aftermath of the Khashoggi incident and with the Yemeni conflict still ongoing,²⁴⁰ arguably anxious to rectify its reputation as a liberal and modern country, the Crown Prince announced that it would allow women to drive.²⁴¹ In 2018, and following numerous

²³⁷ WADJDA (Razor Film et al. 2012). The film was directed by Haifaa al Mansoor and stars a young Saudi actress in the role of the protagonist. In a relatively unusual plot, the film recounts the story of a girl who "signed on for her school's Qur'an recitation competition as a way to raise the remaining funds she needed in order to buy a green bicycle. See also Selena Rincon, "Reel" Change: How Women are Changing Saudi Society Through Film, INSIDE ARABIA (Nov. 6, 2018), <https://insidearabia.com/women-changing-saudi-society-through-film/> (noting that "women in Saudi Arabia are spearheading efforts to produce films that accurately portray daily life in the Kingdom.").

²³⁸ See *Spring Forward for Women Programme: Saudi Arabia*, U.N. WOMEN, <https://spring-forward.unwomen.org/en/countries/saudi-arabia> (last visited Dec. 11, 2019) (statistics demonstrating participation of women in the government).

²³⁹ *Majlis al-Wazirā' Yūāfiq 'alā Tanzīm ar-Ra'āsah al-Āmah li-Hī'ah al-Amar bil-M'arūf an-Nahīy 'an al-Mankar Idāfah Thānīah w Akhīrah* [The Council of Ministers Approves the Organization of the General Residency of the Commission for the Promotion of Virtue and Prevention of Vice, a Second and Final Addition], WAKĀLAH AL-ANBIĀ' AS-S'AUDĪAH [SAUDI PRESS AGENCY] (5 Rajab 1437 [Apr. 12, 2016]), <https://www.spa.gov.sa/viewstory.php?lang=ar&newsid=1488838> (Saudi Arabia). See Sewell Chan, *Saudi Arabia Moves to Curb its Feared Religious Police*, N.Y. TIMES (Apr. 15, 2016), <https://www.nytimes.com/2016/04/16/world/middleeast/saudi-arabia-moves-to-curb-its-feared-religious-police.html> (stating that "in essence the law suggests that 'police are to work only during office hours, and that they do not have the right to pursue, arrest or detain members of the public'"); see also JANE KINNINMONT, VISION 2030 AND SAUDI ARABIA'S SOCIAL CONTRACT, AUSTERITY AND TRANSFORMATION 30 (2017) (reporting that "in April 2016 a royal decree removed the powers of the religious police to arrest or pursue people, and according to several Saudi interviewees this force has also retreated from its very overt presence on the streets of the capital.").

²⁴⁰ HRW, *Qatar: Take Urgent Action to Protect Construction Workers*, *supra* note 207, at 460-61.

²⁴¹ Salmān bin 'Abd al-'Aziz al-S'aud, Amr Sām 6 Muḥarram 1439 [Supreme Order of 26 September 2017] (Saudi Arabia) (English version available at <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1671331>) (Arabic version available at <https://www.spa.gov.sa/1671323>), which allows the issuance of driving licenses on equal terms to women and men. See CEDAW Comm. Concluding Observations on Saudi Arabia, *supra* note 93, at ¶ 4. See also U.S. D.O.S. Report 2018, *supra* note 33; Dantoin, *supra* note 29, at 12; Ben Hubbard, *Saudi Arabia*

protests followed by arrests and detention of women activists,²⁴² it relaxed the prerequisites for male guardianship,²⁴³ and in 2019 it finally permitted women to book hotel rooms on their own.²⁴⁴

Such improvements are certainly not in the text of the Saudi Vision 2030 itself—in fact, the Vision posits “respect for human rights and equality before the law right” only after “respect of visitors and courtesy to expatriates.”²⁴⁵ They are, however, the necessary outcome of the multiple policy reforms in the country’s cultural sector. An illustration of this is arguably the policy of openness in Saudi tourism, media, and entertainment under the Vision 2030.²⁴⁶ This especially includes “religious tourism [which] is one of the main non-oil industries where Saudi Arabia has a clear competitive advantage as custodian of the holy sites of Mecca and Medina.”²⁴⁷

The strategies of implementation of the Vision are already evident: in May 2018, the Kingdom created a governmental body to

Agrees to Let Women Drive, N.Y. TIMES (Sept. 27, 2017), <https://www.nytimes.com/2017/09/26/world/middleeast/saudi-arabia-women-drive.html>.

²⁴² See *Saudi Arabia: UN Experts Urge Freedom for Loujain Al-Hathloul After 500 Days in Prison*, U.N. OHCHR (Sept. 27, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2507>; see also *Saudi Arabia Must Immediately Free Women Human Rights Defenders Held in Crackdown, Say UN Experts*, U.N. OHCHR (June 27, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23270&LangID=E>.

²⁴³ Salmān bin ‘Abd al-‘Aziz al-S‘aūd, Al-Amr as-Sāmīy al-Karīm Raqam 3322 wa Tārīkh 17/14/2019 [Supreme Order No. 33322 (Apr. 17, 2017)] (Saudi Arabia) (cited in CEDAW Comm. Concluding Observations on Saudi Arabia, *supra* note 93, at ¶ 4 (“government entities are instructed to refrain from requiring a woman to obtain a male guardian’s permission in order to have access to services and procedures, except where justified by law.”)).

²⁴⁴ *Saudi Commission for Tourism and National Heritage Announced Friday That Women Can Rent Hotel Rooms by Themselves*, NEW ARAB (Oct. 4, 2019), <https://www.alaraby.co.uk/english/news/2019/10/4/saudi-women-can-now-stay-in-hotels-without-males>.

²⁴⁵ SAUDI ARABIA 2030 VISION, *supra* note 9, at 72 (“As we build our own long-term future, we will remember our duty to respect these principles, which include supporting the vulnerable and needy, helping our neighbors, being hospitable to guests, respecting visitors, being courteous to expatriates, and being conscientious of human rights.”).

²⁴⁶ See *Vision Progress 2018*, KINGDOM OF SAUDIA ARABIA VISION 2030, <https://vision2030.gov.sa/en/vision-progress> (last visited Dec. 11, 2019) (the Saudi vision 2030 regarding launch initiatives to encourage tourism investment “provide[s] for guarantees for 91 new tourism facilities with a total estimated value of SAR 142 million” and “[s]ign 5 contracts to provide credit support worth SAR 64 million for new tourism investments.”).

²⁴⁷ KINNINMONT, *supra* note 239, at 15.

promote the Saudi film industry,²⁴⁸ announcing at the same time that it would set up cash rebate programs and create incentives for international productions and local talent.²⁴⁹ Two months later, it sent a delegation to Cannes, supporting the candidature of Saudi short films.²⁵⁰ In 2019, it relaxed visa requirements for forty-eight nationalities, including Americans,²⁵¹ gaining already significant benefits in the tourism industry.²⁵² Moreover, the Kingdom is now preparing the first Saudi Film festival—the Red Sea International Film Festival 2020²⁵³—while opening up the cultural business to cinema chains such as VOX, VU, AMC, and IMAX.²⁵⁴ In addition, the first official concerts in Saudi Arabia were organized in early 2017, and in October 2019, thousands of Saudis attended a “historic” concert, which was the first occasion where a non-Arab group performed.²⁵⁵

This is a very far leap for a country where the debate on the permissibility of artistic expression has been ongoing for years. Arts and entertainment have been effectively stifled by conservative Saudi

²⁴⁸ *Id.* at 29. See *Saudi Film Council Created*, SAUDI GAZETTE (Mar. 20, 2018), <http://saudigazette.com.sa/article/530911>.

²⁴⁹ Nancy Tartaglione, *Saudi Arabia Sets Cash Rebate Programs to Attract International Productions – Cannes*, DEADLINE (May 11, 2018, 2:54 AM), <https://deadline.com/2018/05/saudi-arabia-cash-rebate-incentive-international-productions-cannes-1202388205/>.

²⁵⁰ *Saudi Arabia Comes to Cannes With First Pavilion and Big Plans*, AL ARABIYA (May 8, 2018), <http://english.alarabiya.net/en/life-style/entertainment/2018/05/08/Saudi-Arabia-comes-to-Cannes-with-first-pavilion-shorts.html>.

²⁵¹ Dominic Dudley, *Saudi Arabia Tries to Push Human Rights Concerns to One Side and Lure in Tourists*, FORBES (Sept. 27, 2019, 9:19 AM) <https://www.forbes.com/sites/dominicdudley/2019/09/27/saudi-arabia-tourism/#2c9dc57762ec>.

²⁵² See e.g., Ben Mack, *Revealed: How Many Visitors sre Flocking to Saudi Arabia Amid Tourism Push*, GULF TIMES (Oct. 3, 2019), <https://gulfbusiness.com/revealed-many-visitors-flocking-saudi-arabia-amid-tourism-push/>.

²⁵³ Melanie Goodfellow, *Can Red Sea Film Festival Reconcile its Bold Vision With Saudi Arabia's Political Controversy?*, SCREENDAILY (Aug. 30, 2019), <https://www.screendaily.com/features/can-red-sea-film-festival-reconcile-its-bold-vision-with-saudi-arabias-political-controversy/5142375.article> (the festival is scheduled to run in 2020).

²⁵⁴ *Id.*; see also *VOX Cinemas Granted License Worth \$533 Million Operate in Saudi Arabia*, AL ARABIYA (Apr. 22, 2018), <https://english.alarabiya.net/en/life-style/entertainment/2018/04/22/VOX-Cinemas-granted-second-license-to-worth-533-million-operate-in-Saudi-Arabia.html>.

²⁵⁵ *K-Pop BTS Criticized for Saudi Arabia Concert*, THE GUARDIAN (Oct. 11, 2019, 9:53 PM), <https://www.theguardian.com/music/2019/oct/12/k-pop-group-bts-criticised-for-saudi-arabia-concert>.

scholars for a long time,²⁵⁶ including Salafists and Wahhabists who claim that all figurative representation and music (other than Qur'anic recitation)²⁵⁷ should be prohibited, offering both Qur'anic verses and *hadiths* as justification.²⁵⁸ Still, today Saudis are requested by the religious authorities not to dance nor enjoy themselves too much.²⁵⁹ Concerts and festivals, in addition, are still held separately for men and women, and are generally opposed by some Saudi clerics, who have issued *fatwas* against them.²⁶⁰ However, it is only a matter of time for Saudi society to realize that neither tourism, nor a sustainable economy based on knowledge and human development can materialize without access to culture, media freedom, and gender equality. Women, atheists, persons with disabilities, and LGBTQI individuals are all part of this.

IV. CONCLUSION

The discourse on human rights in the GCC has nothing comparable to the struggles for social justice to which the latter are typically

²⁵⁶ See e.g., JAMES NOYES, THE POLITICS OF ICONOCLASM: RELIGION, VIOLENCE AND THE CULTURE OF IMAGE-BREAKING IN CHRISTIANITY AND ISLAM 74 (2013); see Muhammad Al-Atawneh, *Leisure and Entertainment (mālāhi) in Contemporary Islamic Legal Thought: Music and the Audio-Visual Media*, 19 ISLAMIC L. & SOC'Y 397, 398; see also DANFORTH *supra* note 29.

²⁵⁷ See generally Lois Ibsen al Faruqi, *The Cantillation of the Qur'an*, 19 ASIAN MUSIC 1 (1987) (for information on Qur'anic recitation). See Jean-Louis Michon, *Music and Spirituality in Islam*, in VOICES OF ISLAM, VOL. 4: VOICES OF ART, BEAUTY, AND SCIENCE 59, 77, 86 (Vincent J. Cornell ed., 2007); Farid El Asri, *L'expression musicale de Musulmans Européens; Création de sonorités et normativité religieuse [Musical Expression of Muslim Europeans: Creation of Tones in the Event of Religious Norms]*, 25 REVUE EUROPÉENNE DES MIGRATIONS INTERNATIONALES 35 (2009).

²⁵⁸ Qur'an, Surat Al-Jumu'ah 62:11; see Al-Atawneh *supra* note 256 at 407 (2012) (referring to the views of Shaykh Ahmad al-Kutty and Shaykh 'Abd al-'Aziz Ibn Biz); see also Eleni Polymenopoulou, *A Thousand Ways To Kiss The Earth: Artistic Freedom, Cultural Heritage And Islamic Extremism*, 15 J.L. & RELIGION 39, 56 nn.100-102 (2015); Taha Jabar al-Alwani, *Fatwa Concerning the US Supreme Courtroom Frieze*, 15 J.L. & RELIGION 1, 6-10 (2001);.

²⁵⁹ Alhussein & Almohamadi, *supra* note 46 (noting that “. . . while concerts are finally being held in Saudi Arabia, a number of rules and regulations are recited at the beginning of each concert, most starkly instructing the audience to refrain from dancing.”).

²⁶⁰ Ibrahim al-Hatlani, *Saudi Clerics Keep Mum About Concerts in the Kingdom*, AL-MONITOR (Feb. 20, 2017), <https://www.al-monitor.com/pulse/originals/2017/02/saudi-arabia-religious-gender-mixing-music-concerts.html#ixzz658kF6SBD> (noting the opinion of Kingdom's Great Mufti's views (Sheikh Abdul Aziz al-Sheikh) that “concerts and films cause immorality.”).

associated—such as, for instance, redistribution of wealth, increasing wages, and augmenting social welfare. The rights of citizens and those of non-citizens in GCC States are deeply divided, and gender equality is still in many respects not comparable to universal human rights standards. At the same time, in the areas of social, economic, and cultural rights, GCC States have shown enormous progress—particularly in striving to provide an adequate right to education and in the context of development and international solidarity. This is also why these countries score particularly high in terms of the SDGs and the UNDP's human development index.

There is, however, at present no indication of a human rights trend in terms of commitments in the area of civil liberties (especially related to freedom of speech and the right to non-discrimination). Shari'a law *per se* does not appear to be the principal reason for the discrepancies between local and international standards. Blunt statements about the incompatibility between Shari'a and human rights law, however, have only fueled conflict and extremism. These statements have long estranged the human rights discourse in the Gulf from other issues that are, arguably, more palatable in the understanding of the Gulf's own perception of human rights. These are the Gulf States' political structures as monarchies and their dependency, to date, on both hydrocarbons and migrant workforces. With this being said, it does seem that the Gulf States' Visions for the future (2030, 2035, 2040) may have the effect of nurturing a culture of human rights compliance by simply initiating local policies that improve human development and build knowledge-based economies.

Qatar, which has impressively ratified both the ICCPR and the ICESCR in 2018, has arguably gone one step further than other Gulf States by realizing, precisely, that human rights are a prerequisite of progress and modernity. Yet even in Qatar, "human rights compliance" is arguably not the fruit of a radical change in culture or philosophy. It is rather an undisputed necessity for that State, first, to retain its key role as "norm entrepreneur" in international affairs²⁶¹ and enhance its position as a global player following the blockade; and second, to achieve economic diversification away from hydrocarbons. In fact, Qatar appears to have realized that for its Vision 2030 to be

²⁶¹ See NICOLAS FROMM, *CONSTRUCTIVIST NICHE DIPLOMACY: QATAR'S MIDDLE EAST DIPLOMACY AS AN ILLUSTRATION OF SMALL STATE NORM CRAFTING* 21 and 57ff (2019) (discussing Qatar's rise from a 'background actor' to a 'principle performer on the stage of international politics' and the strategic use of international norms to improve its international status).

implemented (which includes hosting the World Cup in 2022, reinforcing education, “fixing” population demographics, and achieving economic diversification), there needs to be at least some human rights compliance. The abolition of the system of sponsorship in 2020²⁶² and the work of the Qatari Supreme Committee in the area of labor rights in particular are evidence of how best practices are effective in building up local strategies enhancing human rights.

The same could possibly happen in Saudi Arabia a few years from now, whereby the Vision will require effective strategies in managing infrastructure, tourism, and services, while reassuring investors and building up the entertainment and sport industries. In simple terms, local policies supporting the organization of mega-sports events, international film festivals, and openness to tourism will simply prove to be ineffective without adequate respect of key rights, such as non-discrimination and gender equality. Now, however, such commitments are even more necessary for the *invisible* citizens of the Gulf. These invisibles include *Bidoons*, atheists, women who are subject to male guardianship, domestic workers, LGBTQI individuals, members of (Shia) minorities, and arguably also human rights activists, political dissenters, and persons with disabilities. For these individuals, the realities of Gulf States, including the Shari’a discourse, are still afar from a visible perspective of bringing full equality in dignity and rights—as the UDHR proclaims. This is why international commitments and the scrutiny they involve should co-exist with these GCC strategies and best practices. It is also up to the future to show which one will be more effective.

²⁶² Law no 17/2000 Law No. 17 and 18 of 2020 <https://portal.www.gov.qa/wps/portal/media-center/news/news-details/hhtheamir-issuesdecreesonlaborlawandminimumwagesforlaborers.;> https://www.ilo.org/beirut/projects/qatar-office/WCMS_754391/lang--en/index.htm